

Sex Crimes Litigation as Hazardous Duty: Practical Tools for Trauma-Exposed Prosecutors, Defense Counsel, and Paralegals

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TWO COMMON SCENARIOS IN MILITARY JUSTICE

Captain John Pryor is a twenty-nine-year-old Trial Defense Counsel, who has three years' experience in the Army.¹ Having served in the fields of Legal Assistance and Administrative Law for two of those three years, he has been counsel for five cases involving possession or distribution of child pornography.² For the last three months, he has represented Private First Class Davis, a soldier charged with possession of several video images depicting the rape of infants by adults. Similar to 56% of active duty military members, Captain Pryor is married,³ and like 44% of the military, he has children of his own, a five-year-old and an infant.⁴ While exposure to the prior videos and pictures from other cases certainly incensed him, something was different about Davis's case. The numerous images of infant molestation were seared into his consciousness and revisit him on a daily

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¹ This Trial Defense Counsel is purely hypothetical, as is his Trial Counsel counterpart described below. However, both fictional attorneys represent real Judge Advocates and the special dilemmas they face when encountering traumatic case material.

² Captain Pryor's relative lack of experience in criminal litigation prior to inheriting such cases is not uncommon within the military's Judge Advocate General's [JAG] Corps. See *infra* Parts III.B & III.C (discussing limited longevity in military justice positions and lack of experience).

³ KAREN ROSE BLAISURE ET AL., *SERVING MILITARY FAMILIES IN THE 21ST CENTURY* 31 (2012) ("Fifty-six percent of active duty members and 48% of selected reserve service members were married in FY 2009.").

⁴ *Id.* at 33 ("In FY 2009, 44% of active duty and 43% of selected reserve members had children, an average of two children per member.").

basis, epitomizing federal judge John Adams's observation, "There are some images that are haunting, and they cannot be unseen."⁵ Although Captain Pryor asked his Senior Defense Counsel and Regional Defense Counsel about the prospect of withdrawing from the case, his request was not supported, on the basis that it requires far more than personal discomfort to withdraw from the representation of a military client.⁶

Captain Pryor has begun to dread the prospect of defending the *Davis* case and inheriting any others involving child pornography or abuse of children. In the past few weeks, he has begun to dream about his own children victimized at the hands of strangers, teachers, and even fellow service members.⁷ He has entirely lost interest in sexual intimacy with his wife for fear that he will be interrupted by memories of the images.⁸ Sometimes he is haunted by audio tracks of the depicted children's screams alone, without recalling the accompanying repulsive videography.⁹ He has asked his wife to thoroughly interview the childcare providers and installed cameras in all of the rooms in his house, even though he lives on a gated military installation far more secure than the outlying civilian community.¹⁰ Captain Pryor begins to doubt whether his successful representation

⁵ United States v. Cunningham, 680 F. Supp. 2d 844, 854 (N.D. Ohio 2010).

⁶ United States v. Baker, 58 M.J. 380, 387 (C.A.A.F. 2003) ("A motion to withdraw should not be made or granted in any case unless the circumstances as a whole have produced such an irreconcilable conflict between counsel and the accused that effective representation is no longer possible.").

⁷ Disturbing nightmares are common responses to exposure to traumatic material among all professionals. Kathleen D. Rich, *Vicarious Traumatization: A Preliminary Study*, in *IMPACT: WORKING WITH SEXUAL ABUSERS* 75, 84 (Stacey Bird Edmunds ed., 1997) ("[F]lashbacks, bad dreams and bad images of clients' traumatic material . . . represent the *sin qua non* of vicarious traumatization."). Such dreams are often accompanied by additional symptoms of Secondary Traumatic Stress (STS), which stem from the realization that the world is less safe. See *infra* Part I & Figs. 1-3 (describing various symptoms).

⁸ His experience is similar to "a sex offender therapist who is avoiding sexual contact with his or her spouse because of feelings of disgust brought up by an offender," Shiloh A. Catanese, *Traumatized by Association: The Risk of Working Sex Crimes*, 74 *FED. PROB.* 36, 37 (2010), and the victim advocate in the District Attorney's Office who lamented, "I can't make love with my partner now without being tormented by these awful images or hearing the words of my client's perpetrators. Then I lose all interest in being sexual, and my partner gets hurt and frustrated." KAREN W. SAAKVITNE ET AL., *TRANSFORMING THE PAIN: A WORKBOOK ON VICARIOUS TRAUMATIZATION FOR HELPING PROFESSIONALS WHO WORK WITH TRAUMATIZED CLIENTS* 38 (1996).

⁹ He is hardly alone in this regard, as research with forensic examiners of suspected child pornography has similarly revealed how the sexually abused children's voices in videos are often the most haunting element of their exposure, with the sound intrusively returning without the accompanying images. Lisa M. Perez et al., *Secondary Traumatic Stress and Burnout Among Law Enforcement Investigators Exposed to Disturbing Media Images*, 25 *J. POLICE CRIM. PSYCHOL.* 113, 120 (2010).

¹⁰ Like other professionals who work with victims and perpetrators of sexual offenses, he has become overprotective of his children. See, e.g., Amanda Nicole Harms, *The Dirty Work of Law Enforcement: Emotion, Secondary Traumatic Stress, and Burnout in Federal Officers Exposed to Disturbing Media* 33 (May 3, 2011) (M.A. Thesis, Minnesota St. Univ. Mankato) (on file with

of this client on a motion to suppress will ultimately encourage Private Davis to graduate from videos to the molestation of young children in the future.¹¹ In his preparations for a possible sentencing hearing, Captain Pryor has learned that Davis was himself a victim of child molestation from his uncle and suffered numerous stressors associated with his combat experience, notably including three separate improvised explosive device attacks which took the lives of some of his friends. Yet, Pryor is unmoved and unsympathetic.¹² He has rescheduled three meetings with his client, delaying the sight of Davis as much as possible.¹³ Although he will not admit it, even to his own wife, Pryor has a growing desire to see his client locked up for as long as possible to protect his own children, and feels as though he must actively resist urges to sabotage his client's own case during preliminary hearings.¹⁴ *Hatred* of Davis would be an understatement.

Although Captain Autumn Richardson wears a Marine Corps uniform and prosecutes cases as a Trial Counsel, she too has experienced concern over a recent case; in this instance involving a female service member rape victim. A single thirty-two-year-old officer, Richardson worked her way from the enlisted ranks through law school to become a Judge Advocate [JA]. Increasingly, throughout the course of the case, she has found that the victim, Lance Corporal Brenda Lyons, has become extremely "clingy," calling the office every day for updates,¹⁵

author) (discussing a similar response by federal agents who review suspected child pornographic images as part of their duties). In extreme cases, exposure to traumatic material leads some professionals to disallow sleepovers, cell phones, and even playing outside of the house. *Id.* See also SAAKVITNE ET AL., *supra* note 8, at 36 (relating the following comments of a school psychologist who experienced serious overprotectiveness STS symptoms: "I can't let my kids play outside in the yard. I don't feel they're safe with anyone else—even my husband sometimes.").

¹¹ See *infra* Part IV.3 (discussing distinctions between Trial Counsel and Trial Defense Counsel, especially the notion that defense counsel face specific pressures and responsibilities related to the client's future recidivism).

¹² See *infra* Part III.F (exploring the client's combat trauma as a factor that enhances the risk of Secondary Traumatic Stress in Trial Defense Counsel).

¹³ See *infra* Fig. 1 (observing how avoidance of the traumatized client or victim is a primary natural coping mechanism in all professionals' responses to secondary trauma).

¹⁴ See, e.g., Susan Bandes, *Repression and Denial in Criminal Lawyering*, 9 BUFF. CRIM. L. REV. 339, 350 (2006) (noting similar secret desires by attorneys who defend clients on "particularly brutal rape" charges). In fact, a defense attorney admitted that he deliberately lost a capital case because he "was so repelled by his client." *Id.* at 343.

¹⁵ In the military setting, this experience is frequent because Military Sexual Trauma (MST) survivors often require additional assurances from authority figures, like attorneys, based on the extreme manner in which the assault challenged their notions of trust, loyalty, and the military values to which they subscribed and expected of uniformed perpetrators. See Margaret E. Bell & Annemarie Reardon, *Working with Survivors of Sexual Harassment and Sexual Assault in the Military*, in ADVANCES IN SOCIAL WORK PRACTICE WITH THE MILITARY 72, 76 (Joan Beder ed., 2012) ("[S]urvivors of sexual trauma in the military seem particularly likely to have difficulties with hierarchies, systems, and institutions, as well as with interpersonal interactions in which one person has power over another, such as employee-employer or client-healthcare provider relationships.").

and referring to the prosecutor as “my attorney” in discussions with office staff.¹⁶ Although, in preparation for sentencing, Captain Richardson has discussed the manner in which the assault has affected nearly all aspects of Corporal Lyons’s life and resulting feelings of a loss of security even sleeping in her dorm on base, Richardson has increasingly begun to feel like Lyons was responsible for her own assault.¹⁷ Captain Richardson feels guilty over these feelings, having originally preferred to use an empowerment model, especially with a fellow female.¹⁸ She

¹⁶ See, e.g., Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 J. TRAUMATIC STRESS 182, 184 (2010) (“Victims may falsely assume that their relationship with the prosecutor is equivalent to legal counsel for the defendant, when in fact the prosecutor’s main objective is to ensure the successful prosecution of the case.”); Jeffrey J. Pokorak, *Rape Victims and Prosecutors: The Inevitable Ethical Conflict of De Facto Client/Attorney Relationships*, 48 S. TEX. L. REV. 695, 699 (2007) (recognizing the phenomenon in which sexual assault victims, specifically, “are led to believe, either overtly or by compassionate promises, that the prosecutor represents them—that the prosecutor is their personal attorney in the upcoming criminal proceedings”). A victim’s representative comments to the prosecuting attorney, “But you were my lawyer, you were supposed to believe in me,” *id.* at 697, demonstrate how, “under each standard regarding the creation of attorney client relationships, the prosecutor and his agents may act in ways that would lead any reasonable victim to” reach this conclusion. *Id.* at 722. This false impression may, in fact, help obtain compliance from sexual assault victims in the more difficult trial preparation tasks.

As of January 2013, the Air Force has implemented the Special Victims Counsel Attorney program to assign an independent attorney to sexual assault victims for the purpose of helping to guide the victim through the military justice process. See Staff Sergeant David Salanitri, *AF Provides Special Counsel to Sexual Assault Survivors*, U.S. AIR FORCE NEWS, May 24, 2013. For further description of this initiative, see, e.g., Captain Allison A. DeVito, *An Introduction to the Special Victims Counsel Program*, 40 REPORTER 4 (2013); Captain Richard A. Hanrahan, *Through Her Eyes: Lessons Learned as a Special Victim’s Counsel*, 40 REPORTER 23 (2013). However, these additional attorneys cannot step into the role of the prosecutor, especially in the heat of litigation. See, e.g., Hanrahan, *supra*, at 26 (discussing inherent limitations of the role and function of the Special Victims Counsel).

¹⁷ Victim-blaming is sadly a common response in professionals who work with victimized persons. See, e.g., Mary Ann Dutton & Francine L. Rubinstein, *Working with People with PTSD: Research Implications*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 82, 87 (Charles R. Figley ed., 1995) (“The trauma worker’s detachment from the survivor may result from identification with the offender, where the [trauma] worker looks for culpable behaviors in the survivor (e.g., ‘victim blaming’) and has difficulty with the victim’s anger toward the offender.”); MaryDale Salston & Charles R. Figley, *Secondary Traumatic Stress Effects of Working with Survivors of Criminal Victimization*, 16 J. TRAUMATIC STRESS 167, 170 (2003) (“As a way of defending oneself from hearing the traumatic material of the survivor, therapists may dissociate to some degree, distance themselves, question the viability of the story being told . . . , and be overwhelmed with feelings of guilt or helplessness.”).

¹⁸ Recognizing the manner in which a sexual assault deprives the victim of control, the empowerment model generally seeks to “create an environment in which the client feels safe,” and able to “control their thoughts, feelings, and behaviors.” Sarah E. Ullman & Stephanie M. Townsend, *What is an Empowerment Approach to Working with Sexual Assault Survivors?*, 36 J. COMMUNITY PSYCHOL. 299, 300 (2008). Trial Counsel and Special Victims Prosecutors can use empowerment when they allow the victim to take breaks, give the victim the chance to set the agenda for discussing various topics at the outset of the meeting, account for the victim’s safety in preparation for trial, or frame as many choices as possible. See, e.g., Lynette M. Parker, *Increasing*

has been aware of her “disgust” ever since Corporal Lyons shared information of two prior instances in which she “froze” and experienced unwanted sexual intercourse after accepting invitations to the rooms of male Marines in a nearly identical manner as the current case.¹⁹

Like a substantial number of military recruits, who saw the military as a means to “escape” a dangerous and abusive home life, Corporal Lyons related that she experienced sexual abuse by her step-father as a child for a period of years.²⁰ She believes that her experiences of child sexual assault influenced her in a negative and indescribable way.²¹ Like many survivors of Military Sexual Trauma

Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center, 21 GEO. IMMIGR. L.J. 163, 182 (2007) (reviewing numerous techniques for addressing victims' special needs in legal counseling and litigation settings); Bell & Reardon, *supra* note 15, at 72, 87 (addressing empowerment techniques for survivors of Military Sexual Trauma, specifically, including “finding ways to structure the . . . relationship to promote a sense of control . . . such as by having a collaborative discussion at the beginning of a session about agenda items for the day.”). Here, Captain Richardson, like clinicians who deal with trauma survivors, owing to her own feelings of helplessness, has abandoned the empowerment approach believing that her client has exploited their relationship. Dutton & Rubinstein, *supra* note 17, at 82, 86 (noting a variation of victim-blame in which the “trauma worker begins to feel victimized by his or her clients whom he or she sees as threatening, manipulative, or exploitative”).

¹⁹ Notably, sexual assault survivors are at great risk of sexual re-victimization. At base, “approximately two of three individuals who are sexually victimized are revictimized.” Catherine C. Classen et al., *Sexual Revictimization: A Review of the Empirical Literature*, 6 TRAUMA, VIOLENCE & ABUSE 103, 124 (2005). Scholars who have studied this phenomenon suggest that revictimization frequently occurs because of the survivor's mental reaction to, and symptoms stemming from, the trauma of the first assault, which makes them less likely to be aware of danger cues during the perpetration of the subsequent one(s). See, e.g., Michelle A. Fortier et al., *Severity of Child Sexual Abuse and Revictimization: The Mediating Role of Coping and Trauma Symptoms*, 33 PSYCHOL. OF WOMEN Q. 308, 310 (2009) (discussing reasons for revictimization); MIC HUNTER, HONOR BETRAYED: SEXUAL ABUSE IN AMERICA'S MILITARY 26 (2007) (providing an example of a maladaptive response). These characteristics likely account for Corporal Lyons's experiences with other Marines in similar situations. For additional insights, see *infra* Part III.A (exploring how aspects of MST survivors' experiences and characteristics make attorneys more likely to suffer Secondary Traumatic Stress).

²⁰ See, e.g., Heidi M. Zinzow et al., *Trauma Among Female Veterans: A Critical Review*, 8 TRAUMA, VIOLENCE & ABUSE 384, 385 tbl.1, 389 (2007) (reporting that between 27% and 49% of female veterans reported experiencing child sexual abuse, statistics which are significantly higher than rates for the general population (17% to 32%)); Ursula A. Kelly et al., *More Than Military Sexual Trauma: Interpersonal Violence, PTSD, and Mental Health in Women Veterans*, 34 RES. IN NURSING & HEALTH 457, 458 (2011) (noting study results in which “one in four [female veterans] had been raped [as an adult] prior to her entry into the military”).

²¹ Those military members who have experienced a form of child sexual assault prior to joining the military are at greater risk of being sexually assaulted during their military service. Classen et al., *supra* note 19, at 103 (“Child Sexual Abuse . . . doubles or even triples the risk of sexual revictimization for adult women.”); Zinzow et al., *supra* note 20, at 394 (“A large percentage of women enter the military with prior traumatic [sexual] experiences, placing them at risk for cumulative trauma exposure during the course of their military service.”).

[MST],²² she has, at times, voiced doubt about her perpetrator's wrongfulness, even though she was totally incapable of consenting at the time of her assault.²³ Richardson recently learned that Lyons has diagnoses of PTSD and Major Depression as a result of her cumulative sexual trauma in combination with combat trauma during a recent deployment to Afghanistan, one of the most difficult diagnoses to treat in the military because of its complex origins.²⁴ When Richardson questions Lyons about the redness and fresh abrasions that have begun to appear near her wrists, Lyons explains that she doesn't wish to kill herself. Instead, "cutting" is the manner in which she is able to release the tension, and has done so since her abuse as a child.²⁵ This knowledge was the final straw. Captain Richardson herself begins to feel helpless in her representation of Corporal Lyons and believes that the Corporal is destined for an unavoidable path of self-destruction. She starts to joke about Lyons's weaknesses to fellow prosecutors, substituting "eggshell victim" for her name.²⁶ Richardson feels ashamed to wear the same uniform as Corporal Lyons because Marines should be strong and

²² Although imprecise as a term, MST generally describes "sexual assault or repeated, unsolicited, threatening acts of sexual harassment that occurs during military service." Erin L. Rowe et al., *Military Sexual Trauma in Treatment-Seeking Women Veterans*, 21 MIL. PSYCHOL. 387, 388 (2009).

²³ As a difficult obstacle for prosecuting attorneys, often, MST survivors "struggle profoundly with feelings of self-blame, finding it easier to believe that they may have done something to provoke an attack than to conceive of betrayal at the hands of such a trusted other." Bell & Reardon, *supra* note 15, at 78.

²⁴ See *infra* Part III.A.

²⁵ Corporal Lyons is hardly alone. Like other child sexual assault survivors, she is more prone to rely upon ineffective coping mechanisms that she was forced to implement early on in her cognitive development prior to learning more effective methods at self-regulation. Bell & Reardon, *supra* note 15, at 80–81 (observing how MST survivors with childhood sexual abuse histories are often "drawing on less developmentally advanced coping strategies such as dissociation, behavioral acting out, cutting or other forms of self-harm" based on childhood experiences). See also Pamela J. Deiter et al., *Self-Injury and Self Capacities: Assisting an Individual in Crisis*, 56 J. CLINICAL PSYCHOL. 1173, 1187 (2000) ("Most self-injury is a survival technique. It is a reaction to almost unendurable circumstances or internal experiences."). Additionally, like veterans of Operation Iraqi Freedom [OIF] and Operation Enduring Freedom [OEF] diagnosed with PTSD, she is more likely than veterans of other wars to engage in "repetitive aggressive or homicidal episodes and suicidal urges and attempts." Sarah C. Voss et al., *Treating Traumatized OEF/OIF Veterans: How Does Trauma Treatment Affect the Clinician?*, 42 PROF. PSYCHOL.: RES. & PRAC. 79, 81 (2011). See also Kelly et al., *supra* note 20, at 458 ("PTSD is a strong predictor of suicidal ideation and suicide attempts for both men and women."); Rachel Kimmerling et al., *The Veterans Health Administration and Military Sexual Trauma*, 97 AM. J. PUB. HEALTH 2160, 2164 (2007) (discussing "[t]he link between MST and suicide and intentional self-harm"). For a detailed examination of these risks, see generally Alina Suris et al., *Predictors of Suicidal Ideation in Veterans with PTSD Related to Military Sexual Trauma*, 24 J. TRAUMATIC STRESS 605 (2011) (noting how "veterans who screened positive for [PTSD] were more than 4 times as likely as veterans who did not screen positive to endorse suicidal ideation").

²⁶ As in this case, familiar responses include name-calling, "sick jokes" and "black humor . . . to distance the lawyers from the victims and their pain." Bandes, *supra* note 14, at 372.

independent. She lets her phone ring until the caller is forced to leave a message because she wants to avoid the prospect of yet another update to Lyons on the status of the case. Each day, Captain Richardson wishes for the case to finally end, or, at least, that her next victim will be “stronger willed.”

The above narratives reveal the manner in which military prosecutors and defense attorneys must both interact with traumatic case material stemming from victims, offenders, or evidence tied to a sexual offense. The context of the attorney’s specific duties makes them susceptible to different types of indirect or “Secondary Traumatic Stress” [STS] stemming from the litigation. At base, STS generically describes the manner in which a person can be traumatized simply from hearing or being exposed to someone else’s trauma or implementations that caused it.²⁷ While Captain Richardson’s STS is based on “empathic strain” resulting from her direct interaction with Corporal Lyons,²⁸ Captain Pryor’s trauma stems from the depictions of abused children in movies found on Private Davis’s computer hard drive. Despite differences in the methods by which they have acquired secondary trauma, both attorneys have experienced similar symptoms: they feel helpless and overwhelmed with the traumatic material in the cases; they are distressed at home and away from the office; both have started to develop different views about the world based on their exposure; and both have begun to avoid contact with the source of the traumatic material—the accused and the victim.²⁹ Although the dual scenarios reveal threats to relationships with victims and clients,³⁰ it is noteworthy that STS affects more than these relationships; when lawyers are impaired, it affects justice.³¹ With continually increasing reports of

²⁷ See, e.g., Brian E. Bride & Charles R. Figley, *Secondary Trauma and Military Veteran Caregivers*, 79 SMITH COLL. STUD. IN SOC. WORK 314, 314, 316 (2009) (observing that STS results when “caregivers of persons who have directly experienced psychological trauma . . . themselves become indirect victims of the trauma,” and that a shorthand for this phenomenon is “the cost of caring for those in harm’s way”).

²⁸ Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. REV. 965, 987 (2007).

²⁹ For a more comprehensive description of common STS symptoms, see *infra* Figs. 1 & 2.

³⁰ See Laurie Anne Pearlman & Karen W. Saakvitne, *Treating Therapists with Vicarious Traumatization and Secondary Traumatic Stress Disorders*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 150, 157 (Charles R. Figley ed., 1995) (“[T]he therapist with unacknowledged vicarious traumatization can retraumatize clients and otherwise harm them in both overt and subtle ways.”); Charles R. Figley & Joan Beder, *The Cost of Caring Requires Self Care*, in ADVANCES IN SOCIAL WORK PRACTICE WITH THE MILITARY 278, 280 (Joan Beder ed., 2012) (noting that professionals who are experiencing Compassion Fatigue “may be at higher risk to make poor professional judgments, create poor treatment plans and take out some of their anguish on clients who are not experiencing trauma”).

³¹ Bandes, *supra* note 14, at 384 (“[T]he costs of . . . avoidance [of STS] are great, not only for the emotional well-being of those who practice law, but for the system of justice as a whole.”); Monica Miller et al., *Addressing the Problem of Courtroom Stress*, 91 JUDICATURE 60, 61 (2008) (“In order for the judicial system to function properly, it is important for legal actors . . . to be of sound mind and body.”).

sexual assault in the military despite intensive training programs,³² and proposed legislation aiming to remove sexual assault from the commanders' discretion,³³ the military now faces unprecedented pressure to pursue sex offenders in court, epitomized by the Army Chief of Staff's recent pronouncement, "It is time we take on the fight against sexual assault and sexual harassment as our *primary mission*."³⁴ In meeting this unprecedented pressure, it is likely that these challenges inherent in sexual assault litigation will only increase, necessitating careful analysis of the manner in which secondary trauma influences attorney well-being and the effectiveness of the military justice system at large.

This article explores STS among military attorneys on the front lines—often literally³⁵—and recommends interventions where they are most needed. Part I defines key concepts which have been used both definitively and interchangeably to characterize the way that various professionals are influenced by work-related traumatic material. After this theoretical overview of the many components of STS, Part II explores the results of the few studies of the phenomenon in the legal profession, which sometimes focus exclusively on prosecutors, defense attorneys, or judges. While the studies have made some headway in identifying unique risks inherent in legal practice, they have not yet identified separate mechanisms that are capable of distinguishing between different types of legal professionals. Because legal studies are extremely limited, this Part also analyzes research findings related to law enforcement investigators and others in disciplines that intersect with sexual trauma material. This Part concludes by discussing some attributes of the legal system that make recognition and mitigation of ST more challenging, especially the tough and aggressive posture common to sexual assault litigation and the objective nature of legal analysis which eschews the idea that emotions have any rightful place in the law.

After establishing the reality of STS in the legal profession, Part III discusses a number of reasons why military attorneys are at significantly *greater risk* than their civilian counterparts for experiencing the negative effects of STS in their prosecution and defense of cases involving sexual offenses. The risk ultimately

³² See generally 1 & 2 U.S. DEP'T OF DEFENSE, SEXUAL ASSAULT PREVENTION AND RESPONSE, DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2012 (Apr. 15, 2013) (reporting increased rates of unwanted sexual contact among female service members compared to 2010 statistics).

³³ See, e.g., Spencer Ackerman, *Slowly, Military Opens the Door to Outside Prosecutions for Sexual Assault*, WIRED (May 17, 2013), <http://www.wired.com/dangerroom/2013/05/hagel-dempsey-assault/> (noting Defense Secretary Chuck Hagel's recognition that there are at least ten pieces of congressional legislation in addressing command discretion, with some "even taking [responsibility for the prosecution of sexual assault] out of the chain of command").

³⁴ GENERAL RAYMOND T. ODIERNO, CSA SENDS: SEXUAL ASSAULT AND SEXUAL HARASSMENT 1 (May 17, 2013) ("Commanders, non-commissioned officers, and law enforcement must ensure that every allegation of sexual assault and sexual harassment is thoroughly and professionally investigated and that appropriate action is taken.").

³⁵ See *infra* Part III.G (describing the additional dimension of military operational stress for Trial and Trial Defense Counsel involved in the prosecution and defense of military sexual offenses).

arises from the combination of their limited courtroom experience and their increased likelihood of exposure to victims who have suffered cumulative trauma. Further complicating matters is the increasing level of scrutiny upon sexual assault courts-martial in which prosecutorial discretion is vested in a military commander rather than an attorney, creating additional opportunities for discord in the approach to handling a case or rejection of pleas. Although military attorneys experience many of the same stresses as civilian lawyers, with increased numbers of Judge Advocates deployed in support of OIF and OEF, another unique aspect is the real possibility that the military attorney has experienced some deployment-related trauma of his or her own, which might surface in unexpected ways as a result of exposure to a witness's or accused's traumatic material.

Part IV helps military attorneys distinguish between universal STS mechanisms and those that exist within the context of specific litigation tasks. For example, while all attorneys can experience STS from reviewing "disturbing media" obtained during the course of an investigation, certain unique risks arise from the prosecutor's relationship with a victim, where there might be an expectation to rescue the victim, or the defense attorney's feelings of complicity in the offense as a result of the defense function. This Part also discusses the related consequences of these generic and specific STS phenomena if they are not recognized and addressed. Common dangers include prosecutorial insensitivity to weaknesses in their own cases, lack of zealous representation among defense counsel, and, often, the desire to leave criminal litigation altogether. In the military setting, where counsel are expected to serve a limited time as criminal attorneys, short terms in litigation may also be an incentive to forego addressing negative influences in the hope that one will eventually move on, significantly magnifying the risk of undesired outcomes as these influences remain unchecked.

With knowledge of the different ways that ST results from participation in the litigation of sexually based military offenses and an understanding of the consequences that can arise when these influences remain unattended, Part V offers military attorneys (and any sex assault litigators, for that matter) practical self-assessment tools to monitor their reactivity in a given case. This Part collects the various resources in a single location for immediate use by readers in addressing the complex challenges of military sex crime cases. It ultimately eliminates the time-consuming and difficult task of locating and obtaining these tools from distant libraries and obscure professional repositories. Drawing on instruments developed for all trauma workers, regardless of professional divides, this Part highlights the most useful tools for attorneys. Aside from standard measures for assessing the Trial Counsel's feelings about a victim or the Trial Defense Counsel's reactions to the accused, it contains other measures to evaluate attorney responses to disturbing media for the purpose of noting the influence of such material on the attorney's functioning and beliefs. Part VI concludes with suggestions on interpreting the various instruments and identifying levels at which it would be wise for the attorney to seek guidance from either supervisors or mental health professionals. "Guidance," however, does not necessarily mean

therapy, and should be considered here as an invitation to explore one's own reactions to aspects of a case which are little different than the process that licensed mental health professionals undergo to explore their own human reactions in clinical counseling relationships.³⁶ This Part also provides some insight on the importance of debriefing sessions with senior military justice personnel and/or mental health providers to immediately process attorney reactions to traumatic material in exceptionally troubling cases. Finally, the article addresses the institutional role in preventing and mitigating STS. It is hoped that these recommended solutions will aid the military's Judge Advocate General's [JAG] Corps, similar to the helping professions, to meet their "duty to inform," and satisfy their "special obligation" to prepare, these lawyers regarding the hazards of sexual trauma work.³⁷

I. COUNTERTRANSFERENCE AND SECONDARY TRAUMATIC STRESS

The two examples above, involving trial attorneys from two different Armed Services, reflect factual scenarios that are commonly encountered in courts-martial involving sex crimes. Child pornography cases are so frequent in the military that Congress recently amended the Uniform Code of Military Justice to articulate a purely military offense for possession, distribution, or production of it,³⁸ rather than relying upon the incorporation of federal statutes, which do not directly apply overseas.³⁹ Furthermore, as in Corporal Lyons's case, a substantial number of military sexual assault cases involve victims who experienced prior forms of sexual abuse, either when they were children, or later when they had already enlisted in the Service.⁴⁰ These factors complicate the Trial Counsel's interactions with military sexual assault victims because they are very likely to develop mental health conditions as a result of their cumulative trauma that can impact their welfare and ability to participate in the prosecution.⁴¹ Captain Pryor's and Captain

³⁶ *Infra* Part VI (discussing institutional responsibilities in the prevention and mitigation of STS).

³⁷ Salston & Figley, *supra* note 17, at 173. For an excellent paper discussing the JAG Corp's duty to implement STS and self-care components in its attorney training curricula at all levels, see generally Major Kari Crawford, *Trauma, Training, and the Trial Advocate* (2013) (unpublished paper on file with The Judge Advocate General's Legal Center & School, U.S. Army).

³⁸ MANUAL FOR COURTS-MARTIAL, UNITED STATES, at pt. IV, ¶ 68.b.f (2012).

³⁹ See, e.g., *United States v. Martinelli*, 62 M.J. 52 (C.A.A.F. 2005) (holding that the Child Pornography Protection Act may not be applied extraterritorially through Clause 3 of Article 134, of the Uniform Code of Military Justice); Major Patrick D. Pflaum, *Building a Better Mousetrap or Just a More Convoluted One?: A Look at Three Major Developments in Substantive Criminal Law*, ARMY LAW. 29, 40-47, 41 n.159 (Feb. 2009) (discussing the need for a military-specific child pornography charge, especially given the "significant appellate litigation" that emerged absent one).

⁴⁰ *Infra* Part III.A.

⁴¹ Even without prior experiences of sexual trauma, "MST is associated with a greater likelihood of developing PTSD than either childhood sexual abuse or civilian sexual assault." Jennifer L. Strauss et al., *Is Military Sexual Trauma Associated with Trading Sex Among Women*

Richardson's experiences fundamentally highlight the reality of legal countertransference, a term borrowed from clinical psychology's recognition of the manner in which therapists react both intentionally and subconsciously in response to their patients and the information relayed by their patients.⁴² From the numerous definitions, the most applicable to attorneys calls it "the unconscious attunement to and absorption of victim's stresses and trauma."⁴³ While attorneys surely experience legal countertransference during the exercise of their duties and professional responsibilities, they rarely have the tools to detect, evaluate, or address undesirable countertransference responses and reactions.⁴⁴ Hence, at the outset, this article uses military justice countertransference as a term to signify the dire need for such awareness in sexual assault cases because of the raw emotions and nature of the traumatic material involved here, specifically.

Pryor's and Richardson's stories collectively reflect the significant manner in which trauma exposure can influence military attorneys. The first example involving Captain Pryor describes the phenomenon of Vicarious Traumatization [VT], a process in which a professional is traumatized by salient and disruptive aspects of the case involving the individual he or she is assigned to assist.⁴⁵ Although this can occur through hearing *descriptions* of the traumatization of others,⁴⁶ Captain Pryor, during his mandatory review of the evidence, has been forced to view the videos of children, listening to their cries and watching in real time, as if a live witness to their suffering. He has been vicariously traumatized by

Veterans Seeking Outpatient Mental Health Care?, in MILITARY SEXUAL TRAUMA: CURRENT KNOWLEDGE AND FUTURE DIRECTIONS 78, 81 (Carolyn B. Allard & Melissa Platt eds., 2012).

⁴² Charles R. Figley, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 1, 10 (Charles R. Figley ed., 1995) (recognizing one definition for countertransference [CT] as "all of the emotional reactions of the therapist toward the patient—regardless of their sources").

⁴³ Paul Valent, *Diagnosis and Treatment of Helper Stresses, Traumas, and Illnesses*, in TREATING COMPASSION FATIGUE 17, 19 (Charles R. Figley ed., 2002).

⁴⁴ See, e.g., Bandes, *supra* note 14, at 348 ("[O]ur legal culture . . . provides no vocabulary, no ongoing discourse, no arena, and, arguably, no permission for discussion of coping strategies and their emotional effects."). This is especially true in the JAG Corps. After reviewing several attorney training programs in the Army, Navy, and Marine Corps, Major Kari Crawford concluded, "[p]ut simply, the JAG [Corps] fails to prepare Judge Advocates in how to properly cope with traumatic subject matter and how to avoid trauma-based fatigue. Crawford, *supra* note 37, at 24.

⁴⁵ See, e.g., Allen Rubin & Eugenia Weiss, *Secondary Trauma in Military Social Work*, in HANDBOOK OF MILITARY SOCIAL WORK 67, 69 (Allen Rubin et al. eds., 2013) ("[V]icarious traumatization . . . [is] the negative transformation in the helper that results from empathic engagement with trauma survivors and their trauma material, combined with a commitment or responsibility to help them.") (citation omitted); Rich, *supra* note 7, at 75 (defining vicarious traumatization as "a process by which therapists treating survivors of trauma are vulnerable to alterations in their own cognitive schemata leading to alterations in their adaptation to the world").

⁴⁶ See, e.g., Fines & Madsen, *supra* note 28, at 988–89 ("Vicarious traumatization . . . is a specific reaction to particular information presented by the client."); *Id.* at 988 ("For some, simply learning about a traumatic event carries potential for vicarious traumatization.").

watching the children's abuse, even though he never formed a personal relationship with any of them or personally knew them prior to the viewing.⁴⁷ Alternatively, Captain Richardson has experienced a different phenomenon of Compassion Fatigue, which occurs when a professional in a counseling relationship experiences adverse reactions upon being exposed to a person's suffering and wants to help without the ability to resolve it.⁴⁸ Although she is not Lyons's therapist, she discusses legal options, reviews testimony, responds to concerns, and has supportive obligations that certainly require empathy on her part.⁴⁹

Both VT and CF exist within the overarching category of Secondary—indirect—Trauma [ST], and resultant STS,⁵⁰ which often results in emotional effects, including nightmares, avoidant behavior, and even blame of one's client for traumatic experiences.⁵¹ Currently, while there are academic distinctions between VT, CF, and CT,⁵² these concepts are so interrelated,⁵³ that they are better considered to be mechanisms for acquiring the same ultimate condition of STS.⁵⁴ Importantly, while some definitions of the term initially focused upon trauma

⁴⁷ In efforts to harmonize definitions of VT outside of the therapeutic setting, it is accepted that VT can occur from "exposure to the traumatic material," aside from the more common deviation of client interactions. Fines & Madsen, *supra* note 28, at 990. For an in-depth discussion of attorneys' STS reactions to disturbing media, see *infra* Part IV.A.2.

⁴⁸ See, e.g., Monica K. Miller & James T. Richardson, *A Model of Causes and Effects of Judicial Stress*, 45 A.B.A. JUDGES J. 20, 21 (2006) ("Compassion fatigue applies to those who are emotionally affected by another's trauma in a work-related setting and who seek to ameliorate that distress."); Robert W. Motta et al., *Assessing Secondary Trauma*, 27 A.A.B.T. BEHAV. THERAPIST 45, 54 (2004) ("Compassion fatigue specifically refers to trauma reactions that are acquired by individuals who work in a therapeutic manner with those who have been traumatized.").

⁴⁹ See, e.g., Miller & Richardson, *supra* note 48, at 21 ("Compassion fatigue applies to those who are emotionally affected by another's trauma in a work-related setting and who seek to ameliorate that distress.").

⁵⁰ ST and STS chiefly recognize that "people can be traumatized without actually being physically harmed or threatened with harm." Charles R. Figley, *Introduction*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED xv (Charles R. Figley ed., 1995). Primary stress applies to those "exposed directly to harm," whereas ST applies to "those exposed to those in harm's way." *Id.*

⁵¹ See *infra* Figure 1, for a more detailed description of STS symptoms.

⁵² See, e.g., Rubin & Weiss, *supra* note 45, at 69 ("[V]icarious trauma puts more emphasis on cumulative effects on practitioners working with multiple survivors."); Rich, *supra* note 7, at 75 (distinguishing CT from VT on the basis that CT involves "previously existing personal issues evoked in the therapist when interacting with a client"); Margaret Severson & Carrie Pettus-Davis, *Parole Officers' Experience of the Symptoms of Secondary Trauma in the Supervision of Sex Offenders*, 57 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 5, 7 (2013) (distinguishing indirect trauma types on the basis that some lead to changes in thinking while others lead to emotional and social reactions).

⁵³ *Infra* Part IV.A.1 (discussing how each distinct pathway ultimately leads to similar STS symptoms).

⁵⁴ *Id.*

experienced by victims of sexual assaults, it is accepted that the term also applies to professionals who work with and treat offenders who caused trauma. Thus, the preferred definition of STS in this article, which applies equally to Trial Defense and Trial Counsel, is “the emotional, cognitive, and physical consequences of providing professional services to [victims] or *perpetrators* of trauma.”⁵⁵

Many typical STS symptoms are “virtually identical” to those of PTSD, as described in Figure 1, below.⁵⁶

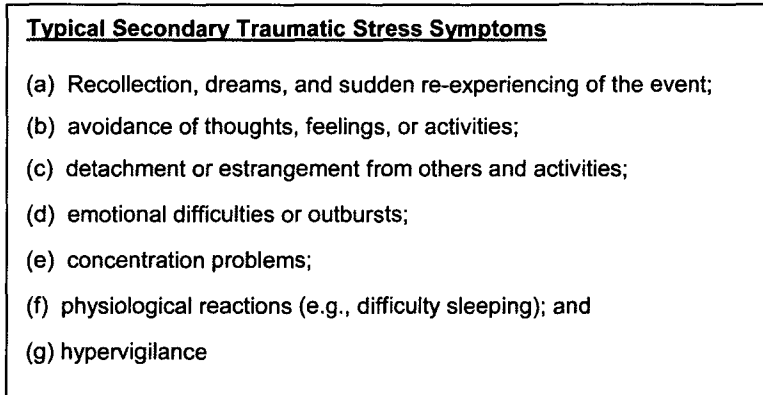


Fig. 1⁵⁷

⁵⁵ Severson & Pettus-Davis, *supra* note 52, at 7 (emphasis added).

⁵⁶ Perez et al., *supra* note 9, at 114 (noting “virtually identical . . . symptoms” of PTSD and STSD).

⁵⁷ Severson & Pettus-Davis, *supra* note 52, at 7.

Beyond this, helpers may experience any of the additional “target symptoms,” recognized in Figure 2, below:

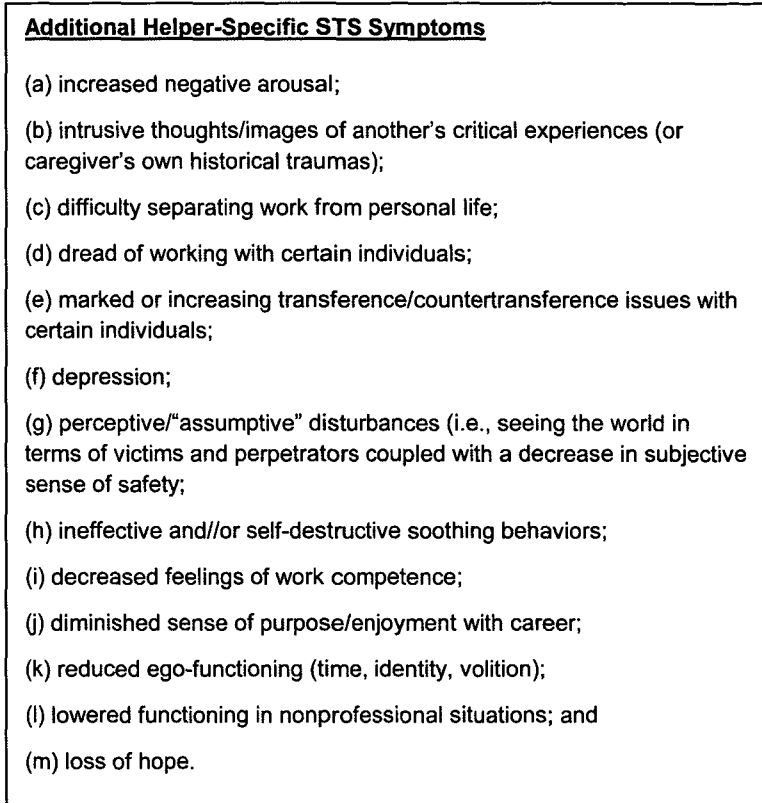


Fig. 2⁵⁸

These symptoms can alternatively be viewed in terms of six specific markers exhibited by professionals working with the traumatized:

STS “Markers” Among Professionals Working with the Traumatized

1. *Emotional* markers involve . . . experiencing feelings of powerlessness, anger, and survivor guilt.
2. *Cognitive* markers entail lowered concentration, intrusive thoughts, and preoccupation with trauma.

⁵⁸ J. Eric Gentry et al., *ARP: The Accelerated Recovery Program (ARP) for Compassion Fatigue*, in *TREATING COMPASSION FATIGUE* 123, 126 (Charles R. Figley ed., 2002) (alteration of original) (removing redundant typical STS symptoms previously identified in Fig.1).

3. *Behavioral* markers include symptoms such as being jumpy or on edge, suffering from sleep disturbances, and experiencing changes in appetite.
4. *Spiritual* markers typically involve a [professional] feeling hopeless and questioning previously held religious beliefs.
5. *Somatic* markers include physical exhaustion, having aches and pains, suffering from an impaired immune system and gastrointestinal problems.
6. *Social* markers entail a [professional] experiencing a general mistrust of others, becoming socially isolative and having interpersonal conflicts in addition to becoming overprotective as a parent or as a leader.

Fig. 3⁵⁹

In some reported cases, therapists suffered nearly identical symptoms as their patients simply based on indirect exposure to the trauma experienced by the patient.⁶⁰ As applied to attorneys, some analogize the acquisition of STS to imagery of a boulder in a river: “The raging river is the client’s life. The boulder falling is the trauma occurring. The image of secondary trauma is a lawyer standing in the river. They don’t get hit by the boulder but they feel the ripple effect.”⁶¹ Despite similarities, STS symptoms are most often “less severe” than PTSD symptoms.⁶² As a consequence, STS is not a diagnosis in the Diagnostic and Statistical Manual of Mental Disorders [DSM];⁶³ instead, it better represents a “process,” which, if unattended, might actually progress into a diagnosable disorder.⁶⁴ Notably, professionals “may experience STS symptoms without having clinically significant symptoms of PTSD or experiencing impairment in social or occupational functioning.”⁶⁵ The 2013 DSM-5, while not carving out a separate

⁵⁹ Rubin & Weiss, *supra* note 45, at 73.

⁶⁰ See, e.g., Arin Greenwood, *Ripple Effects: Education and Self-Care Can Help Lawyers Avoid Internalizing Client Trauma*, 92 A.B.A. J. 1, 20 (2006) (“Those who experience secondary trauma can feel as if they’ve suffered their client’s traumas themselves.”); Gentry et al., *supra* note 58, at 124 (“The symptoms of CF can mimic, to a lesser degree, those of the traumatized people we are working with.”).

⁶¹ Greenwood, *supra* note 60, at 20 (alteration of original) (internal quotation marks omitted).

⁶² See Motta et al., *supra* note 48, at 54.

⁶³ Ga-Young Choi, *Secondary Traumatic Stress of Service Providers Who Practice with Survivors of Family or Sexual Violence: A National Survey of Social Workers*, 81 SMITH STUD. SOC. WORK 101, 102 (2011).

⁶⁴ SAAKVITNE ET AL., *supra* note 8, at 41 (“Vicarious traumatization is a process, not an event. It includes our strong feelings and our defenses against those feelings.”); Bride & Figley, *supra* note 27, at 316 (“In the extreme, STS may warrant a diagnosis of [PTSD].”).

⁶⁵ Choi, *supra* note 63, at 102.

diagnosis for STS, substantially clarified that PTSD may be caused by “extreme exposure to aversive details of the traumatic event(s) . . . [but] does not apply to exposure through electronic media, television, movies or pictures, unless . . . work related,” even if the person never had such direct experiences.⁶⁶ Such formal recognition highlights the prevalence of STS as well as its potential to progress into PTSD when left unattended.

Although the scholarly literature sometimes suggests that STS can only result from the context of a long-term therapeutic relationship with two-way communication and interaction,⁶⁷ an early study demonstrated that the professional need not have met or observed the victim in person to experience STS.⁶⁸ There, five experienced female nursing professors, each with “at least ten years’ experience in nursing,” devoted a few hours per day to reading and coding the content of rape victims’ written accounts of their sexual trauma.⁶⁹ After three months of undertaking the activity, all of the professionals experienced significant physical and psychological effects, many of which “closely parallel[ed]” those of the rape victims, even though the survivors and the reviewers never met or had any sort of physical interaction.⁷⁰ Some of the shared symptoms included “sleeping disorders, emotional responses, somatizing, increased cautiousness, and the need for social support.”⁷¹ Figure 4, below, reveals specific comparisons between the primarily and secondarily traumatized in the study:

⁶⁶ AM. PSYCHIATRIC PUB., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 265, fig.309.81 (5th ed. 2013), available at www.dsm.psychiatryonline.org [hereinafter AM. PSYCHIATRIC PUB.].

⁶⁷ See, e.g., Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 246 (2003) (addressing how conditions in the profession “develop[] as a consequence . . . during long-term individual psychotherapy”); Robert W. Motta et al., *Initial Evaluation of the Secondary Trauma Questionnaire*, 85 PSYCHOL. REP. 997, 998 (1999) (contemplating “the acquisition of trauma responses due to close association with a traumatized individual”).

⁶⁸ Janet G. Alexander et al., *Research Note: Parallel Reactions in Rape Victims and Rape Researchers*, 4 VIOLENCE & VICTIMS 57, 57 (1989).

⁶⁹ *Id.* at 58.

⁷⁰ *Id.* at 60.

⁷¹ *Id.*

Excerpt from "Comparison of Reactions: Rape Victims and Rape Researchers"

<u>Behavior of Victim</u>	<u>Behavior of Researcher</u>
Anger at self and assailant	Anger at victim, assailant, and husband of victim
Anxiety	Anxiety
Fear of being alone	Fear of being harmed
Fear of being raped again	Fear of being raped
Blaming self	Blaming victim
Avoiding reminders of rape	Selective inattention during data collection
Insomnia, nightmares	Insomnia, nightmares
Changing residence, phone, employment	Seeking out well-lighted parking areas, rechecking locked doors

Fig. 4⁷²

The above researcher symptoms persisted even though "all the researchers were seasoned faculty and experienced with the problem of rape in a clinical context"⁷³ The consequence of this study is that Assistant Trial Counsel, Appellate Counsel, and paralegals who do not play a full role in courtroom litigation are still at risk of developing STS as a result of their limited contact with traumatic case material.⁷⁴

Secondary Traumatic Stress adverse reactions are so common among psychologists, social workers, and other mental health clinicians that they are considered to be "natural,"⁷⁵ "normal,"⁷⁶ "distinct and inevitable,"⁷⁷

⁷² *Id.*, at tbl.1 (alteration of original).

⁷³ *Id.* at 58.

⁷⁴ Although few studies have explored attorney STS, let alone symptoms experienced by paralegals exposed to STS, one notable exception is Professor Levin and his colleagues, who explored STS levels among public defenders and their support staff. Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946 (2011).

⁷⁵ Choi, *supra* note 63, at 115 ("STS is a natural response to assisting survivors of family violence and sexual assault.").

⁷⁶ Suzanne M. Slattery & Lisa A. Goodman, *Secondary Traumatic Stress Among Domestic Violence Advocates: Workplace Risk and Protective Factors*, 15 VIOLENCE AGAINST WOMEN 1358, 1359 (2009) ("Like a diagnosis of [PTSD], an STS reaction is considered to be a normal response to exposure to victims of traumatic events rather than an abnormal or pathological reaction.").

“predictable,”⁷⁸ and even “inescapable . . . occupational hazard[s].”⁷⁹ In sum, regardless of professional divides, it is clear that all helpers exposed to others’ trauma are united in their *human condition*;⁸⁰ “[v]irtually any person professional or lay, who hears or reads of the initial traumatic event is at risk for [STS].”⁸¹ Based on widespread health difficulties, dissatisfaction with careers, and flight from the mental health career path, the helping professions have increasingly recognized the need for training, interventions, self-diagnostic tools, and supervisor-facilitated debriefing protocols to mitigate the effects of STS.⁸² While lawyers do not typically think of themselves as trauma workers, they serve in this function by default when their duties require them to evaluate and revisit any person’s trauma.⁸³ In this regard, they must deal with the same raw and unsettling material as mental health clinicians, all of whom have undeniable human reactions to the same material, regardless of how experienced they may be.⁸⁴ Because of defense attorneys’ and prosecutors’ regular exposure to victimization and suffering, traumatologists who study STS further compare these legal professionals

⁷⁷ Fines & Madsen, *supra* note 28, at 986 (referring to vicarious trauma as “a distinctive and inevitable consequence . . . in professions dealing with a high degree of traumatized clients”).

⁷⁸ Salston & Figley, *supra* note 17, at 169; Joy D. Osofsky et al., *How to Maintain Emotional Health When Working with Trauma*, 59 JUV. & FAM. CT. J. 91, 99 (2008) (noting STS as “expectable effects of exposure to the trauma and suffering of others”).

⁷⁹ SAAKVITNE ET AL., *supra* note 8, at 25.

⁸⁰ *Id.* (“[STS] is not something clients do to us; it is a human consequence of knowing, caring, and facing the reality of trauma.”).

⁸¹ Severson & Pettus-Davis, *supra* note 52, at 7.

⁸² Rebecca Wright et al., *Child Abuse Investigation: An In-Depth Analysis of how Police Officers Perceive and Cope with Daily Work Challenges*, 29 POLICING: INT’L J. POLICE STRAT. & MGMT. 498, 499 (2006) (“[T]here is increasing pressure on organizations to ensure that the risk of psychological injury is minimized for all employees and that strategies are implemented to ensure early identification of trauma symptoms and effective intervention when they occur.”); see also Brian E. Bride & Charles R. Figley, *Secondary Trauma and Military Veteran Caregivers*, 79 SMITH C. STUD. SOC. WORK 314, 325 (2009) (“[T]he STS research and theory literature is now becoming robust . . . [including] . . . a number of books, measurements, and best practice protocols.”); *infra* Part V (discussing specially-tailored self-tests for a variety of professionals who work with traumatized persons).

⁸³ Figley, *supra* note 50, at xiii, xv (including “lawyers” as professional caregivers in addition to therapists and emergency professionals); see also Captain Evan R. Seamone, *Attorneys as First-Responders: Recognizing the Destructive Nature of Posttraumatic Stress Disorder on the Combat Veteran’s Legal Decision-Making Process*, 202 MIL. L. REV. 144, 146 (2009) (“Just as Congress considers victim advocates first responders based on the fact that they are often the first persons to have contact with sexual assault victims, disaster planners and others recognize that attorneys sometimes serve as first responders.”).

⁸⁴ See, e.g., Captain Evan R. Seamone, *The Veterans’ Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Posttraumatic Stress Disorder*, 202 MIL. L. REV. 185, 197–207 (2009) (discussing the inevitable overlap between attorneys’ and psychologists’ counseling functions, particularly for clients troubled by symptoms of stress disorders).

to “victim advocates, caseworkers . . . , physicians, and applied researchers, among others.”⁸⁵

Importantly, not all traumatic material has the same impact. People are often traumatized by illnesses, warfare, natural disasters, and accidents, each with their own dynamics.⁸⁶ Yet, criminal victimization is different because there is an intentionality to it.⁸⁷ Whether the traumatic case material relates to graphic accounts of sexual violence or the digital memorialization of child molestation, as in the examples of Richardson’s and Pryor’s cases, sexual assault-related traumatic material is uniquely traumatizing for all professionals that must deal with it.⁸⁸ The scant research on criminal lawyers has begun to reveal that they are *more susceptible* to these secondary traumatic effects of sexual assault case material than even mental health clinicians.⁸⁹ Unlike victim advocates or nurse examiners, attorneys must often induce and reenact trauma for presentation at trial and they must further revisit the traumatic aspects of cases during trial preparation and the development of a coherent narrative for the case.⁹⁰ While criminal attorneys who deal specifically with sexual offenses face significant risks of acquiring STS, the legal profession shockingly and inexcusably lacks the same requirements of mental health professions to identify and respond to such personal influences: “[I]n a profession that strives to separate the subjective from the objective, that dichotomizes the personal and the legal . . . , the legal profession has set the stage for attorneys to be chronically ‘unaware’ [of the risks for STS].”⁹¹ For this reason,

⁸⁵ Dutton & Rubinstein, *supra* note 17, at 82, 83. In fact, traumatologists have cited the dilemmas of sexual assault prosecutors and defense attorneys as typical examples of professionals at risk of developing STS from the nature of the work. *Id.* at 82–91.

⁸⁶ Choi, *supra* note 63, at 116 (discussing STS resulting from work with victims of terrorist attacks, natural disasters, and HIV/AIDS). Research-based estimates suggest that 60.7% of adult American males and 51.2% of adult American females have been exposed to at least one major traumatic event that could potentially result in a clinical diagnosis of PTSD. B. Hudnall Stamm, *Measuring Compassion Satisfaction as Well as Fatigue: Developmental History of the Compassion Satisfaction and Fatigue Test*, in *TREATING COMPASSION FATIGUE* 107, 108 (Charles R. Figley ed., 2002).

⁸⁷ Pearlman & Saakvitne, *supra* note 30, at 151 (observing how exposure to sexual assault material leads to “cumulative and permanent” effects in helpers specifically because it divulges “the realities of people’s intentional cruelty to one another”).

⁸⁸ See, e.g., Stephanie Baird & Sharon Rae Jenkins, *Vicarious Traumatization, Secondary Traumatic Stress, and Burnout in Sexual Assault and Domestic Violence Agency Staff*, 18 *VIOLENCE & VICTIMS* 71, 71–72 (2003) (noting a higher likelihood of PTSD among those with “frequent exposure to sexual assault survivors”).

⁸⁹ See, e.g., Levin & Greisberg, *supra* note 67, at 245 (“Compared with mental health providers and social services workers, attorneys demonstrated significantly higher levels of secondary traumatic stress and burnout.”).

⁹⁰ Dutton & Rubenstein, *supra* note 17, at 92 (observing how lawyers must often “deliberately [] facilitate recall of the traumatic event and the survivor’s response in order to obtain facts on which to base legal action”).

⁹¹ Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 *UMKC L. REV.* 965, 987 (2007).

“[t]here may be no other profession [besides law] whose practitioners are required to deal with so much pain with so little support and guidance.”⁹²

II. UNIQUE MANIFESTATIONS OF STS IN THE LEGAL SYSTEM

A. Attorneys

The attorney, unlike the mental health professional, is more likely to come in contact with tangible evidence linked to victimization beyond a victim's self-report.⁹³ Defense attorneys, in fact, may be in the unenviable position of learning additional troubling facts from the accounts of the perpetrator, which sometimes includes his or her expressions of joy or satisfaction in committing the charged offense or similar uncharged ones.⁹⁴ While attorney job satisfaction and substance abuse have occupied a prominent place in the legal scholarship,⁹⁵ commentators have paid less attention to the specific causes and dynamics of these maladies. Too often, they use the term “burnout” as shorthand for different or combined forms of attorney stress.⁹⁶ In both legal and non-legal professions, burnout is a state of cumulative exhaustion and the eventual inability to obtain pleasure from one's work.⁹⁷ While STS may contribute to this condition, burnout frequently occurs without any exposure to trauma and can take far longer to manifest than

⁹² Bandes, *supra* note 14, at 342.

⁹³ See, e.g., Levin et al., *supra* note 74, at 947 (“In addition to hearing first-hand accounts, the attorneys review reports and photographs and have contact with physical evidence such as bloody clothing.”); Fines & Madsen, *supra* note 28, at 988 (“[A]ttorneys representing clients are inevitably privy to traumatic material through client narratives and case discovery.”).

⁹⁴ Professionals who work with sex offenders often find it particularly troubling when they are exposed to the offenders' deviant sexual fantasies or accounts of uncharged crimes, which are usually all relayed in the context of privileged communications with counsel. See *infra* Part IV.A.3 (discussing unique STS risks posed by the defense attorney's association with the accused offender).

⁹⁵ See, e.g., CARL HORN III, *LAWYERLIFE: FINDING A LIFE AND A HIGHER CALLING IN THE PRACTICE OF LAW* 23–36 (2003) (describing various trends of attorney dissatisfaction with the legal profession and resulting deleterious psychological consequences, including substance addiction and abuse).

⁹⁶ See, e.g., Meloney C. Crawford & Douglas S. Querin, *Burnout: Avoidable, Not Inevitable*, *LAW. PRAC.*, May/June 2012, at 1, 28 (describing a range of stressors among attorneys as “burnout”).

⁹⁷ CHRISTINA MASLACH ET AL., *THE MASLACH BURNOUT INVENTORY: MANUAL* 192 (2d ed. 1986) (defining burnout as “a psychological syndrome of emotional exhaustion, depersonalization, and reduced physical accomplishment that can occur among individuals who work with other people in some capacity”); Fines & Madsen, *supra* note 28, at 989 (defining burnout as “a general psychological stress and feelings of being overloaded resulting from working with difficult clients”); Miller & Richardson, *supra* note 48, at 21 (defining burnout as “a process of physical and emotional stress caused by several job-related factors such as overload of responsibility or perceived inequality in the workplace”).

STS.⁹⁸ Only a few legal scholars have distinguished and examined STS apart from other types of stress in the legal profession.⁹⁹ Notably, because the concept of “burnout” has so many contributing factors, measures to mitigate burnout may not work with STS, making the theory a poor vehicle for solutions.¹⁰⁰

Probably the first indirect examination of STS in the legal profession dates to Joseph A. Barrette’s and Neil S. Kaye’s 1989 article on “screening out” and managing interactions with “potentially difficult clients.”¹⁰¹ Although the piece was intended for civilian attorneys who have the luxury of choosing their clients, the authors emphasized how certain clients will inevitably manage to “get under [the attorney’s] skin,” either through unreasonable expectations, time consuming demands, or emotional responses to litigation,¹⁰² and then provided a comprehensive checklist to help prospective counsel sort through their emotional reactions to such clients.¹⁰³ Resonating with mental health literature on STS, the article concluded with this prescient advice:

[W]e suggest that through careful reflection you address which cases you can not defend. Often, being asked to work beyond your limitations will trigger your anger. Allow yourself to experience this anger and to let it be a signal to you When reflecting on why a particular client angers you or is seen as difficult in your eyes it may come to you that it is you and not them who is the locus of the problem. If this should occur we strongly advocate professional consultation. If the same type of client or case always produces the same type of emotional over-reaction you likely have some material to work through.¹⁰⁴

⁹⁸ See Fines & Madsen, *supra* note 28, at 989 (observing how, while burnout can occur in any professional, VT is “unique to those working with survivors of traumatic experiences”); Figley, *supra* note 42, at 12 (noting how STS, unlike burnout, “can emerge suddenly with little warning”).

⁹⁹ See, e.g., Levin et al., *supra* note 74; Lin Piwowarczyk et al., *Secondary Trauma in Asylum Lawyers*, BENDER’S IMMIGR. BULL. 1, 4 (2009); Levin & Griesberg, *supra* note 67; see also Fines & Madsen, *supra* note 28, at 986 (describing the scant scholarship in this area and how what does exist for lawyers largely lacks “substance”).

¹⁰⁰ Salston & Figley, *supra* note 17, at 169 (“[T]he concept of burnout is far too vague to be useful in understanding and helping those who work with people traumatized by crime.”); cf. Fines & Madsen, *supra* note 28, at 989 (“Vicarious traumatization is not simply burnout, and one must distinguish the two in order to develop appropriate and effective responses to the attorney’s experience.”).

¹⁰¹ Joseph A. Barrette & Neil S. Kaye, *The Difficult Legal Client*, CASE & COMMENT 26 (Jan.-Feb. 1989).

¹⁰² *Id.* at 26–28.

¹⁰³ *Id.*, app. at 32–33.

¹⁰⁴ *Id.* at 28–29.

Barrette's and Kaye's inaugural exploration was unsurprising considering that the field of traumatology¹⁰⁵ emerged as a consequence of the development of PTSD as an official diagnosis in 1980.¹⁰⁶ By the 1990s, the mental health professions realized that counselors faced significant dangers from indirect exposure to their patients' trauma.¹⁰⁷ Aside from discussions in the insulated scholarship on "clinical" legal services¹⁰⁸ and a handful of limited studies that compared attorney reactions with other professionals, the first systematic study of attorney STS occurred in Professors Andrew P. Levin's and Scott Greisberg's 2003 article *Vicarious Trauma Among Attorneys*.¹⁰⁹ Their article seized on the abundant STS scholarship from mental health, concluding that "attorneys demonstrated higher levels of intrusive recollection of trauma material, avoidance of reminders of the material, and diminished pleasure and interest in activities, and difficulties with sleep, irritability, and concentration."¹¹⁰ Later articles, though far more limited, reflected similar trends.¹¹¹

Despite the fact that criminal litigation is inherently stressful and emotional,¹¹² with certain identified "emotion-evoking" factors,¹¹³ the trend to

¹⁰⁵ Figley, *supra* note 50, at xiii (defining traumatology as "the field of traumatic stress studies").

¹⁰⁶ Levin & Greisberg, *supra* note 67, at 245.

¹⁰⁷ *Id.*

¹⁰⁸ See, e.g., *id.* at 248 (discussing a handful of papers on "counter-transference and identification with the victim" and management strategies for long-term client counseling relationships); Levin et al., *supra* note 74 (exploring articles in limited forum of clinical law scholarship). A notable exception is an article addressing occupational stress among public defenders which touched on subjective role conflict, a contributing factor to STS, but which neglected any discussion of trauma exposure. David R. Lynch, *The Nature of Occupational Stress Among Public Defender*, 19 JUST. SYS. J. 17, 20 (1997).

¹⁰⁹ Levin & Greisberg, *supra* note 67, at 245–46 (observing that, prior to their own examination, in 2003, "[n]o systematic studies have evaluated vicarious trauma in attorneys").

¹¹⁰ *Id.* at 250.

¹¹¹ See, e.g., Piwowarczyk et al., *supra* note 99, at 7 (observing that 87% of surveyed immigration attorneys handling asylum cases "had two or more symptoms of secondary stress" and concluding that the group was at significant risk for VT/STS). The results of international studies mirrored the American trend establishing elevated STS risk in attorneys. See, e.g., Lila Petar Vrklevski & John Franklin, *Vicarious Trauma; the Impact on Solicitors of Exposure to Traumatic Material*, 14 TRAUMATOLOGY 106, 111 (2008) (comparing reactions of solicitors in civil and criminal trials).

¹¹² See, e.g., Miller et al., *supra* note 31, at 63 ("[T]he courtroom is an inherently emotional setting.").

¹¹³ See, e.g., *id.* (noting additionally the disarming emotional effects of "gruesome photographs" of the crime scene or victims' injuries, "victim impact statements," and a defendant's behavior during trial, as litigation-specific triggers); Larry J. Cohen & Joyce H. Vesper, *Forensic Stress Disorder*, 25 LAW & PSYCHOL. REV. 1, 17–19 (2001) (describing anxiety symptoms solely attributable to involvement in litigation, which are quite similar to PTSD symptoms).

examine STS in the legal profession was short-lived.¹¹⁴ And existing studies suffered from research designs, which lent doubt to the generalizability of their results.¹¹⁵

After several years of inactivity in the legal scholarship—contrary to an explosion of interest in the mental health field—2011 marked the next major shift in legal traumatology. In that year, the Wisconsin State Bar Association sponsored the first major scientific examination of STS with 238 public defenders and 109 support staff from the Wisconsin Public Defender’s Office.¹¹⁶ The research largely corroborated disparate study results, concluding that, “at least for attorneys working in the public defender setting PTSD, secondary trauma, and [burnout] symptoms are accompanied by significant impairment and rates of depression . . . and PTSD . . . greater than those reported in the community.”¹¹⁷ In fact, 39% of the attorney sample “demonstrat[ed] significant symptoms of depression,” greater than a third scored “above the 75th percentile” in STS symptoms, and 11% had clinically significant PTSD symptoms.¹¹⁸ On balance, the research makes it clear that sexual offenses are among the most common contributors to STS in the practice of criminal law, which corroborates research findings that mental health professionals and police who worked with sexual assaults are more traumatized than peers who work with other types of crime.¹¹⁹

The handful of articles and books that touch in some way on the experience of STS by prosecutors and defense counsel generally infer that STS may lead attorneys to:

¹¹⁴ Levin et al., *supra* note 74 (recognizing “few studies [prior to 2011] have examined secondary trauma among attorneys exposed to clients’ traumatic experiences”).

¹¹⁵ *Id.* (questioning the studies’ “small sample size, selection bias involving convenience samples, and relatively low percentage responses from the pool of possible subjects”).

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 953.

¹¹⁸ *Id.*

¹¹⁹ See, e.g., Victoria M. Follette et al., *Mental Health and Law Enforcement Professionals: Trauma History, Psychological Symptoms, and Impact of Providing Services to Child Sexual Abuse Survivors*, 25 J. CLINICAL & CONSULTING PSYCHOL. 275, 275 (1994) (discussing the disarming nature of work with sexual trauma for these professionals as opposed to other types of offenses). As one professional who works with sex offenders remarked:

There is no doubt in my mind that I look at the world through a very different set of glasses than my family, friends, and others who do not work with sexual abuse. One of my colleagues calls this perception “being bent.” It felt like the loss of innocence. There were few, if any “safe” places or people left in the world.

Robert E. Freeman-Longo, *Introduction: A Personal and Professional Perspective on Burnout*, in *IMPACT: WORKING WITH SEXUAL ABUSERS* 5 (Stacey Bird Edmunds ed., 1997).

- “react defensively by avoiding cases with traumatic content”;
- “downplay[] a case’s degree of severity”;
- “rationaliz[e] the case’s destructive impact”;
- attempt to rescue a client, and become over-involved as a manifestation of defensive reactions; and/or
- fail to maintain professional boundaries.¹²⁰

But the scholarship has not evolved to the point where it offers specific solutions or differentiates between prosecutors or defense attorneys in any practical manner.¹²¹ Consequently, to approach the problem of STS in a meaningful way, attorneys must also draw from examinations of other professionals like judges, police officers, victim advocates, and even lay persons, like jurors, who deal with the same types of evidence and testimony. Because, “[a]t a minimum, six people are professionally exposed to one sexual offender’s crime,”¹²² this is hardly difficult, with experts advocating that many of the lessons are, in fact, transferrable to attorneys and other members of the legal profession.¹²³

B. Judges

While judges preside over the cases that criminal attorneys prepare for litigation, they are generally more detached from the witnesses and evidence in a case. Distinguished mainly for the greater amount of solitude in the exercise of their duties, it cannot be said that judges face the same exact stresses as the litigators who appear before them.¹²⁴ Despite the fact that judges are more protected from exposure to evidence that is ultimately not used in trial or direct interaction with victims or the accused,¹²⁵ judges face many of the same stressful

¹²⁰ Fines & Madsen, *supra* note 28, at 988.

¹²¹ See, e.g., *id.* at 986 (observing that, as of 2007, “[v]icarious trauma within the legal profession, however, has received scant attention in . . . the legal academia,” and “little literature of any substance”); Levin et al., *supra* note 74 (“Only a handful of studies have attempted to characterize and quantify secondary trauma . . . experienced by attorneys and delineate their relationship to risk factors.”).

¹²² Catanese, *supra* note 8, at 36.

¹²³ See *infra* Part V (drawing on checklists and other self-assessments developed for any professional who works with traumatized persons).

¹²⁴ Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, JUDGES J. 12, 14 (Fall 2006) (distinguishing judges from attorneys based on their level of isolation, and suggesting that “judging carries its own unique risk factors [for VT]” as a result).

¹²⁵ Notably, attorney trial preparation is often the pathway to STS because, aside from reviewing inadmissible evidence or evidence which may never be offered at trial, the attorney must

influences as attorneys, especially in sexual assault cases, evident in accounts of those judges who cry on the bench when observing the aftermath of inhumane acts,¹²⁶ or those who prefer not to view images of child pornography when issuing warrants for seizure of suspected contraband or in reviewing guilty pleas which stipulate to possession.¹²⁷

In recognition that emotional reactions to material in a case can subconsciously influence judicial decision-making and the accuracy of judicial analysis, a separate and distinct literature on STS emerged for judges. Notably, “63 percent of judges who oversaw sex offense cases identified symptoms stemming from work such as interrupted sleep, intolerance of others, increased isolation, as well as physical problems.”¹²⁸ For example, one jurist,

who presided over several child abuse trials realized he felt “triggered” when at his granddaughter’s playground he saw a man pushing a little girl on the swing. “I couldn’t get it out of my head that he was untrustworthy and would harm her later. I had been so immersed in these trials, I had lost all perspective. I kept having intrusive imagery from the photographs shown at trial. I had to look away to get them out of my head.”¹²⁹

Based on the risks associated with unchecked STS among judges, researchers have concluded “that sometimes, in order to do no harm, judges must help themselves.”¹³⁰ Some of the consequences of unchecked STS in judges include:

- “[A]n increase in punitive reactions to defendants”;
- reliance on heuristics, or mental shortcuts, in which they “overestimate the frequency of crime and want to do something about it, including jailing defendants for longer timeframes”;

review and re-review the same material increasingly as trial approaches. *See, e.g.,* Dutton & Rubinstein, *supra* note 17, at 92 (tying STS to attorneys especially because “[a]ny legal case requires extensive amounts of time to be spent in preparation for trial”).

¹²⁶ *See, e.g.,* Miller et al., *supra* note 31, at 58 (discussing trials in which both the judge and the jurors were in tears in response to the lurid testimony).

¹²⁷ *See, e.g.,* United States v. Fiorella, 602 F. Supp. 2d 1057, 1075 n.8 (N.D. Iowa 2009) (“It is easier to overlook the horrors of child pornography when, as is often the case, the material at issue is not presented to the sentencing judge. For the purpose of efficiency and minimization of revictimization of the children depicted, the government and the defendant will often (and rightly so) enter into stipulations about the number and nature of the photographs at issue.”)

¹²⁸ Catanese, *supra* note 8.

¹²⁹ SAAKVITNE ET AL., *supra* note 8, at 39.

¹³⁰ Osofsky et al., *supra* note 78, at 102.

- victim-blaming;
- failure to consider the full range of sentencing alternatives; and
- overall “illogical, cynical, or hasty decisions . . . ,”¹³¹ particularly in “the way they apply legal rules (e.g., on questions of admissibility) and protect and instruct jurors.”¹³²

The major contribution of this literature, with direct application to attorneys, is mental health experts’ recognition that the same STS concepts and interventions that apply to clinicians similarly apply to judges.¹³³

C. *Juries*

There is widespread recognition that sex offenses and violent crimes can cause lasting emotional problems for jurors exposed to such cases.¹³⁴ The term “traumatic trial” has emerged to signal dangers to jurors hearing rape, murder, and aggravated kidnapping cases, specifically.¹³⁵ Failing to address STS among jurors has the consequence of impairing the function of the justice system. While attorneys often use advocacy techniques with the goal of exciting jurors’ emotions,¹³⁶ “[e]xposure to gruesome evidence and complex or upsetting testimony could lead jurors to make decisions based on emotions rather than logic.”¹³⁷ Such exposure may influence their lives well beyond the trial.

After studies evaluating the STS experienced by jurors, some judges and bar associations promulgated measures to help jurors better prepare for the traumatic material prior to exposure.¹³⁸ A notable leader is the Alaska legislature, which, as

¹³¹ Miller & Richardson, *supra* note 48, at 21–23.

¹³² Miller et al., *supra* note 31, at 63.

¹³³ Miller & Richardson, *supra* note 48, at 21 (suggesting that judicial responses to STS may be informed by research in other professionals “who consistently encounter significant levels of secondary trauma, [including] emergency workers, counselors, and therapists. While not directly tied to judges, we believe the underlying assumptions of this research may well apply to them.”).

¹³⁴ Miller et al., *supra* note 31, at 63 (noting that service as a juror in a rape case can lead “jurors to experience depressive symptoms nearly six times more often than serving in non-traumatic trials”).

¹³⁵ *Id.* at 63.

¹³⁶ Aviva Orenstein, *Special Issues Raised by Rape Trials*, 76 FORDHAM L. REV. 1585, 1587 (2007) (“[P]laying upon prejudices, particularly those of the American juror, is the trial attorney’s bread and butter.”).

¹³⁷ Miller et al., *supra* note 31, at 65.

¹³⁸ For an in-depth examination of interventions, see generally Monica K. Miller & Brian H. Bornstein, *The Experience of Jurors: Reducing Stress and Enhancing Satisfaction*, in STRESS, TRAUMA, AND WELLBEING IN THE LEGAL SYSTEM 247, 247–64 (Monica K. Miller & Brian H. Bornstein eds., 2013).

of 2010, “allows judges to offer up to 10 hours of counseling for jurors who experience trials ‘involving extraordinarily graphic, gruesome, or emotional evidence.’”¹³⁹ The Graduated Jury Stress Management program is the “most sophisticated” phased intervention, which combines pretrial instructions with the ability to debrief following trial.¹⁴⁰ Other jurisdictions have developed videos to assist in preparing jurors, such as Washington’s Victim and Witness Services’ (now discontinued) fifteen-minute pretrial video, *Jurors are Victims Too!*¹⁴¹ For attorneys, these developments and interventions are valuable to consider because they highlight the dangers of STS presented by only one trial. They underscore how a single indirect trauma exposure can result in serious deleterious STS depending on its nature, context, and ability to trigger particular responses in a juror or any trained professional alike.¹⁴²

In a potent example, Steven Bengis, a professional who treats sex offenders, explained his reaction to merely viewing a videotaped child forensic interview involving an “offender [who] intermittently substituted his penis for a bottle while feeding the child.”¹⁴³ The trigger was the image of the child “wrenching away and simultaneously pushing her head into the officer’s lap” during the interview.¹⁴⁴ Bengis describes:

I could not rid my psyche of that image for nine years. For weeks after I viewed that film [of the interview], the image repeated itself often in my head. Almost every time it recurs, I experience a shudder in my body. Through the imagery, the trauma the child experienced has become a visceral experience for me.¹⁴⁵

This reaction was from merely watching an interview, without exposure to the underlying abuse that had been described.¹⁴⁶

¹³⁹ *Id.* at 247–48 (internal citation omitted).

¹⁴⁰ *Id.* at 256–57.

¹⁴¹ Miller et al., *supra* note 31, at 66 (describing how the video was “designed to educate jurors about stress, validate their feelings, and prepare them for delayed stress symptoms”).

¹⁴² See, e.g., Dutton & Rubinstein, *supra* note 17, at 92 (“[I]t is possible for a therapist, attorney, or other trauma worker exposed to the graphic detail of a traumatic event, even if only once, to become traumatized.”); Harms, *supra* note 10, at 44 (“[H]aving exposure to disturbing media even only once can lead to negative outcomes . . .”).

¹⁴³ Steven M. Bengis, *Personal and Interpersonal Issues for Staff Working with Sexually Abusive Youth*, in *IMPACT: WORKING WITH SEXUAL ABUSERS* 31, 34 (Stacey Bird Edmunds ed., 1997).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 34–35.

¹⁴⁶ *Id.*

D. Law Enforcement

Increasingly, researchers have shown that “one of the most critical and ignored areas in law enforcement is the emotional toll this stressful occupation takes on its own people,” often reducing police and their families to “emotional casualties.”¹⁴⁷ Aside from different pressures, such as the risk of patrolling neighborhoods without knowledge of where the next threat will emerge, law enforcement personnel face some of the same stresses as attorneys. Officers and investigators must similarly examine the aftermath of horrendous crimes, handle the evidence, and take statements from victims who are often highly reactive and in states of shock, pain, and disbelief. Studies of these officers reveal phenomena that, no doubt, equally plague attorneys, such as frequent use of denial to get by¹⁴⁸ and the stigma of appearing unfit for duty by requesting help from mental health professionals.¹⁴⁹

Like criminal law, something inherent about the law enforcement function places police, federal agents, investigators, and detectives at greater risk of acquiring STS than mental health professionals.¹⁵⁰ Notably, the DSM-5 now lists police officers as an example of those professionals who may develop PTSD on the basis of repeated exposure to the trauma of others.¹⁵¹ While it is possible that exposure to criminal victimization accounts for much of this result,¹⁵² these factors do not account for the increased chance of ST. More important to this article, research has confirmed that the outcome of law enforcement efforts later, in the courts, plays a risk-enhancing role.¹⁵³ To this end, just as the failure to convict an

¹⁴⁷ KEVIN M. GILMARTIN, *EMOTIONAL SURVIVAL FOR LAW ENFORCEMENT: A GUIDE FOR OFFICERS AND THEIR FAMILIES*, xv–xvi (2002).

¹⁴⁸ *Id.* at 27 (describing the “distance-creating process” and noting how, for most officers, “It’s just easier to shut down psychologically and distance yourself from the events around you” than to address them).

¹⁴⁹ Richard L. Levenson, Jr., *Prevention of Traumatic Stress in Law Enforcement Personnel: A Cursory Look at the Roles of Peer Support and Critical Incident Stress Management*, *FORENSIC EXAMINER* 16, 17 (Fall 2007) (“These officers fear being labeled troubled and are concerned that they will be seen as ineffective, unable to take the normal work responsibilities, unworthy of promotion, and unable to carry firearms.”); Wright et al., *supra* note 82, at 505 (noting reluctance to seek “formal psychological counseling” for STS among law enforcement and a preference to use uninformed “informal coping mechanisms” instead).

¹⁵⁰ See, e.g., Wright et al., *supra* note 82, at 499 (“[L]aw enforcement professionals have a higher risk of psychological injury from exposure to traumatic case material than mental health professionals.”); Levin & Greisberg, *supra* note 67, at 247 (noting “greater symptoms of psychological distress (anxiety, depression, dissociation, sleep problems, and PTSD symptoms [in law enforcement] than mental health professionals”).

¹⁵¹ *AM. PSYCHIATRIC PUB.*, *supra* note 66, at 1.

¹⁵² See Pearl & Saakvitne, *supra* note 30 and discussion accompanying note 87.

¹⁵³ See, e.g., Martine B. Powell & Adrian J. Tomin, *Life Satisfaction Amongst Police Officers Working in the Area of Child Abuse Investigation*, 13 *INT’L J. POLICE SCI. & MGMT* 187, 188 (2011) (“Poor conviction rates and exposure to offenders as well as victims may also heighten feelings of compassion fatigue amongst police.”).

alleged sex offender enhances the risk of causing or aggravating PTSD in the victim, it has a similar effect on the officers involved in the arrest and investigation of the crime.¹⁵⁴ While, for the survivor, the harm lies in the challenge to his or her account and the crucible of victim-blaming, the officer undergoes a different pathway to the acquisition of STS. Police are often under such great pressure to make sense of their repeated exposure to cruelty that conviction of the offender may become the very purpose he or she finds in the “dirty work” of law enforcement.¹⁵⁵ Consequently, obtaining convictions and keeping dangerous offenders off the streets can become synonymous with being a cop,¹⁵⁶ which poses significant dangers because of the manner in which this identity function reduces the officer’s perceptual frame.¹⁵⁷ The unilateral focus on convictions can undermine the reliability of investigations and ultimately result in shortfalls that produce acquittals or otherwise lead to the offender’s release.¹⁵⁸ This process is vital for prosecutors to understand specifically because they too face the danger of defining their purpose singularly in terms of conviction and stiff sentences to the abandonment of their duties to the accused and to justice at large.¹⁵⁹

E. Other Professionals Involved in Sexual Assault Response

Those other professionals who are exposed to sexual predators and sexual assault victims, such as parole officers,¹⁶⁰ forensic sexual assault nurse examiners,¹⁶¹ victim advocates,¹⁶² sex offender treatment personnel,¹⁶³ and

¹⁵⁴ Compare *id.*, with *infra* notes 194–196 (discussing secondary victimization of rape survivors during the trial process).

¹⁵⁵ Harms, *supra* note 10, at 45 (observing how a coping mechanism becomes the goal of “taking the worst possible people off the streets”). In one example, a forensic media investigator remarked how “he deals with work by ‘knowing he’ll be securing the conviction and imprisonment of a pedophile’” *Id.*

¹⁵⁶ GILMARTIN, *supra* note 147, at 79 (“The officer’s sense of self is defined by the singular role of being an officer. The sense of self and the job role have become welded together and are basically inseparable: ‘I am a cop.’”).

¹⁵⁷ *Id.* at 23 (describing how sex offense investigators, specifically become so used to seeing their realities in terms of victims and offenders that “[the] very narrow slice of the world,” in which the officer interacts on a daily basis “can become the officer’s entire worldview”).

¹⁵⁸ See, e.g., Karl Ask & Pär Anders Granhag, *Motivational Sources of Confirmation Bias in Criminal Investigations: The Need for Cognitive Closure*, 2 J. INVESTIGATIVE PSYCHOL. & OFFENDER PROFILING 43, 47 (2005) (discussing how one who is motivated to close a case for reasons, which ostensibly include finding purpose in one’s work with sexual offenders, is more likely to “‘leap’ to judgment on the basis of inconclusive evidence, and exhibit rigidity of thought and reluctance to consider views other than his or her own”).

¹⁵⁹ See *infra* Part IV.A.3.i.

¹⁶⁰ Severson & Pettus-Davis, *supra* note 52, at 5.

¹⁶¹ Stephanie M. Townsend, Ph.D. thesis, *Organizational Correlates of Secondary Traumatic Stress and Burnout Among Sexual Assault Nurse Examiners* (2005) (on file with author).

international workers in the prevention of sex trafficking,¹⁶⁴ ultimately reveal how this traumatic content places all responders to sexual trauma at heightened risk, regardless of differences in their duties or training.¹⁶⁵ The studies of these diverse occupations show how, not so different from attorneys, judges, and law enforcement, “[o]ne cannot listen to the sexually abusive events described by victims and offenders without eventually being inundated with intense feelings.”¹⁶⁶ In fact, some experts draw on this conclusion when suggesting that “it is best that an individual not work in the specialized area of sex offenses or sex crimes for more than a few years because of the risk of vicarious trauma.”¹⁶⁷ In the final analysis, the universally disarming nature of sexual trauma—whether transmitted through crime scene photos, victim or witness narrative descriptions, or the real-time memorialization of child molestation and child rape—suggests that attorneys have no special protection against STS influences. Contrarily, because the legal profession manifests less interest in STS and offers correspondingly less training in its mitigation than other professions, attorneys are more susceptible to the detrimental effects of secondary trauma.

III. INCREASED RISK OF STS IN MILITARY SEX CRIME CASES

This Part reveals that eight characteristics of the military justice system, the trial and defense counsel who work in it, and the military or military-affiliated sexual assault victims who must rely upon it, primarily make military sex crimes candidates for generating greater levels of STS among military attorneys. Not all of these eight factors may appear in a given case. For example, a Trial Counsel may not have had the opportunity to deploy, and there are, of course, sexual assault victims who never experienced a traumatic event until their MST. Even in those cases where some of the eight characteristics do not apply, it is essential to recognize that military sexual assault cases, by definition, place military attorneys in three separate categories of trauma work that independently increase the opportunity for STS. Figure 5, below, highlights how there is elevated risk for one who works with sexual assault material, one who works with military members,

¹⁶² See, e.g., Baird & Jenkins, *supra* note 88, at 71 (exploring STS among sexual assault response agency staff).

¹⁶³ See generally IMPACT: WORKING WITH SEXUAL ABUSERS (Stacey Bird Edmunds ed., 1997).

¹⁶⁴ See generally Merav Kliner & Laura Stroud, *Psychological and Health Impact of Working with Victims of Sex Trafficking*, 54 J. OCCUPATIONAL HEALTH 9 (2012).

¹⁶⁵ See, e.g., Rich, *supra* note 7, at 75–76 (noting how VT is “theoretically applicable to professionals other than therapists and to treaters of both perpetrators and survivors of harm”).

¹⁶⁶ Bengis, *supra* note 143, at 35.

¹⁶⁷ Catanese, *supra* note 8, at 37.

and one who is enmeshed in the criminal justice system as a prosecutor or defense attorney:¹⁶⁸

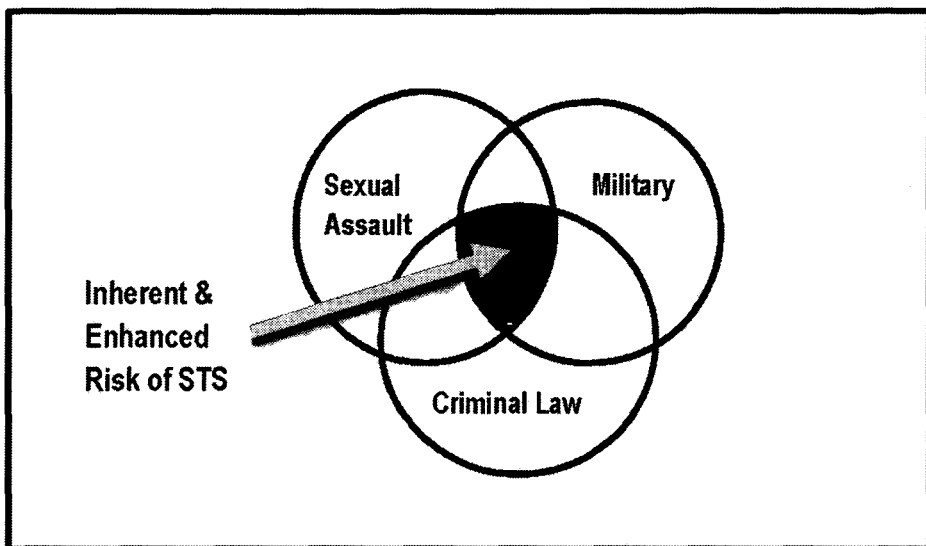


Fig. 5

This is not surprising considering how STS has been classically linked to combat veterans and sexual assault victims for entirely different, independent reasons.¹⁶⁹ Given the already-present cumulative effects of the tripartite status, see above, the additive risk of any of the following eight attributes, or a combination thereof, ultimately creates a breeding ground for secondary traumatic responses.

¹⁶⁸ SAAKVITNE ET AL., *supra* note 8, at 19–20.

¹⁶⁹ See, e.g., Richard E. Adams et al., *Compassion Fatigue and Psychological Distress Among Social Workers: A Validation Study*, 76 AM. J. ORTHOPSYCHIATRY 103, 103 (2006) (linking STS, CF, and VT to work involving sexual abuse and independently to work involving combat); Figley & Beder, *supra* note 30, at 282 (observing how professionals “entrusted with care of the returning service members have high potential to develop CF,” even without any accompanying sexual trauma).

A. Victims with Greater Histories of Sexual Trauma than the Public

Recognizing the significant role of empathy in creating the conditions for STS in professionals,¹⁷⁰ military victims often demand more of it based on their attendant life histories and the influence of their assaults on their wellbeing. Repeated studies of both actively serving military members and separated veterans reveal a far greater portion of military recruits than members of the public have suffered previous sexual trauma prior to their enlistment in the Service.¹⁷¹ The leading form is Child Sexual Assault [CSA] of female recruits,¹⁷² usually at the hands of a relative.¹⁷³ In a significant number of cases, these women were again victimized by different perpetrators prior to enlistment,¹⁷⁴ confirming the observation that, for many of these recruits, joining the military provided an essential method to “escape” from a dangerous and turbulent home life and start afresh.¹⁷⁵

The significant number of CSA survivors who enter the military are already members of a population at heightened risk of revictimization,¹⁷⁶ who then join an

¹⁷⁰ See, e.g., Jaffe et al., *supra* note 124, at 13 (“[T]he empathy that is so critical to working with traumatized people also increases the likelihood of vicarious traumatization.”); Salston & Figley, *supra* note 17, at 169 (explaining how vicarious trauma “is a result of empathic engagement with survivors’ trauma material”).

¹⁷¹ See, e.g., Irene Williams & Kunsook Bernstein, *Military Sexual Trauma Among U.S. Female Veterans*, 25 ARCHIVES OF PSYCHIATRIC NURSING 138, 141 (2011) (“[B]oth men and women who join the military have higher rates of sexual and physical abuse victimization history than the general population.”); Zinzow et al., *supra* note 20, at 389 (noting how, with “at least one third of female veterans hav[ing] child sexual abuse histories,” they are “more likely to report a history of child or adult sexual assault in comparison to the general population.”).

¹⁷² See, e.g., Anne G. Sadler et al., *Life Span and Repeated Violence Against Women During Military Service: Effects on Health, Status and Outpatient Utilization*, 13 J. WOMEN’S HEALTH 799, 803 (2004) (revealing that 34% of 520 female veterans indicated child sexual abuse victimization prior to entry into the military, which was the largest sexual victimization experience represented in the sample).

¹⁷³ See Jessica A. Turchik & Susan M. Wilson, *Sexual Assault in the U.S. Military: A Review of the Literature and Recommendations for the Future*, 15 AGGRESSION & VIOLENT BEHAV. 267, 270 (2010) (noting, in comparison with civilians who were surveyed, “veterans were more likely to report being sexually abused by a parent [and] longer durations of childhood sexual abuse”).

¹⁷⁴ See Sadler et al., *supra* note 172, at 803 (noting that 19% of respondents, in a study of 520 veterans, had been sexually abused as children and also raped as adults prior to enlistment in the military).

¹⁷⁵ *Id.* at 806 (noting, in a study of 520 veterans, that “the majority of women . . . who reported premilitary physical or sexual violence (86%) indicated that they joined the military in order to escape an abusive or distressing home life”).

¹⁷⁶ See, e.g., Henrietta F. Filipas & Sarah E. Ullman, *Child Sexual Abuse, Coping Responses, Self-Blame, Posttraumatic Stress Disorder, and Adult Sexual Revictimization*, 21 J. OF INTERPERSONAL VIOLENCE 652, 652 (2006) (“CSA survivors are at least twice as likely to be revictimized as women with no reported CSA.”); Classen et al., *supra* note 19, at 103 (“[C]hild sexual abuse . . . doubles or even triples the risk of sexual revictimization for adult women.”);

occupation that places them at yet greater independent risk of more sexual victimization.¹⁷⁷ And when revictimization occurs during the course of active duty service, the military assault often has a greater psychological impact on the victim. Because the great majority of sexual assaults upon military women are perpetrated by fellow male service members,¹⁷⁸ the act instantly eviscerates the promise of a more trustful environment than the prior turbulent home life.¹⁷⁹ In stark contrast, the victim is faced with a pressure to conceal the sexual assault that mirrors up to ten aspects of the foreboding and secretive environment surrounding CSA.¹⁸⁰ While “[r]ape victims, in general, are considered to be the largest single group suffering from PTSD,”¹⁸¹ these reasons may help explain why victims of military sexual assault are at greater risk for psychological and physical harm,¹⁸² in addition to a greater likelihood of additional sexual assaults in the immediate aftermath of the military sexual trauma.¹⁸³

As in the hypothetical example involving Marine Captain Richardson, many women who are victims of sexual assault in the military have also deployed to combat. Research confirms that those who have suffered previous sexual trauma prior to a combat deployment are more susceptible to developing PTSD in response to typical combat stressors.¹⁸⁴ When a female service member must

Catalina M. Arata, *Childhood Sexual Abuse and Sexual Revictimization*, 9 CLINICAL PSYCHOL.: SCI. & PRAC. 135, 157 (2002) (same); Sadler et al., *supra* note 172, at 800 (same).

¹⁷⁷ Anne G. Sadler et al., *Factors Associated with Women's Risk of Rape in the Military Environment*, 43 AM. J. IND. MED. 262, 263 (2003) (“[M]ilitary women constitute an occupational group potentially at increased risk of violence.”); *see also* Zinzow et al., *supra* note 20, at 385 (“Women enter the military with significant trauma histories and are exposed to additional traumatic events during the course of military service. This suggests that military women are at risk for cumulative trauma exposure, significant occupational stress, and related mental and physical health problems.”).

¹⁷⁸ Carolyn B. Allard et al., *Military Sexual Trauma Research: A Proposed Agenda*, 12 J. TRAUMA & DISSOCIATION 324, 331 (2011).

¹⁷⁹ Williams & Bernstein, *supra* note 171, at 138 (“Being sexually assaulted by your comrades can produce [PTSD] that can be worse than being assaulted by strangers or enemies.”); *see also* Bell & Reardon, *supra* note 15, at 72, 73 (discussing military-specific factors that make MST far more difficult to endure, such as the “all-encompassing” nature of the military workplace).

¹⁸⁰ HUNTER, *supra* note 19, at 144 (exploring the ten common characteristics); *see also* Bell & Reardon, *supra* note 15, at 72, 77 (observing how the MST environment “has many parallels with environments of childhood sexual abuse”).

¹⁸¹ Lori S. Katz et al., *Military Sexual Trauma During Deployment to Iraq and Afghanistan: Prevalence, Readjustment, and Gender Differences*, 27 VIOLENCE & VICTIMS 487, 489 (2012); *see also* AM. PSYCHIATRIC PUB., *supra* note 66, at 1 (noting how “sexual assault is specifically included” in the DSM-5’s examples of causal events that lead to PTSD).

¹⁸² *See supra* discussion accompanying notes 20–21; *supra* Part III.A.

¹⁸³ *See generally* Classen et al., *supra* note 19, at 104 (“Recent victimization places one at a highest risk of revictimization.”).

¹⁸⁴ *See, e.g.,* Bell & Reardon, *supra* note 15, at 72, 81 (“[S]tudies of OEF/OIF Veterans have shown that that prior exposure to sexual or physical assault increases the risk of mental health problems following combat exposure.”); Zinzow et al., *supra* note 20, at 392 (citing Gulf War

endure the combination of sexual and combat trauma, this condition represents one of the most perplexing challenges facing mental health providers, since the condition results from intertwined but entirely different causes.¹⁸⁵ Not unpredictably, these at-risk victims are reasonably likely to initiate self-harm, to experience difficulty complying with military authority, and to require more assurance from prosecutors about their safety and the viability of the criminal process.¹⁸⁶ In other words, they are more likely to invoke compassion fatigue among military attorneys prosecuting their cases.

Despite the fact that male victims of military sexual trauma are less likely to report sexual assault than their female counterparts,¹⁸⁷ normally keeping silent for decades or forever likely due to their own internalization of male rape myths, such as the fact that they deserved to be assaulted because they were too weak to fight off the perpetrator,¹⁸⁸ roughly the same number of male veterans has reported being sexually assaulted during military service as females.¹⁸⁹ For those prosecutors who encounter male survivors of military sexual trauma, these military members present similar challenges as females when they have pre-enlistment sexual trauma histories¹⁹⁰ or combat trauma in combination with MST.¹⁹¹

deployment statistics that “the likelihood of developing PTSD was 5.4 times more likely in women with a history of sexual assault and 4.0 times more likely in women with high combat exposure, as compared to women who did not experience sexual assault or combat”).

¹⁸⁵ Williams & Bernstein, *supra* note 171, at 142–43 (“[T]he psychological trauma inflicted on female soldiers as a result of MST in conjunction with war trauma is so enormous that health care providers have found caring for this vulnerable population to be very challenging.”).

¹⁸⁶ See *supra* notes 23–25 and accompanying discussion.

¹⁸⁷ Maureen Murdoch et al., *Functioning and Psychiatric Symptoms Among Military Men and Women Exposed to Sexual Stressors*, 172 MIL. MED. 718, 718 (2007) (“[I]n service-wide surveys spanning 1988 to 2002, male troops were approximately one-half as likely as female troops to report sexual assault.”).

¹⁸⁸ See, e.g., Michelle Davies, *Male Sexual Assault Victims: A Selective Review of the Literature and Implications for Support Services*, 7 AGGRESSION & VIOLENT BEHAV. 203, 204 (2002) (“Male victims use male rape myths as a way to blame themselves for their assault.”); David Lisak, *Men as Victims: Challenging Cultural Myths*, 6 J. TRAUMATIC STRESS 577, 578 (1993) (noting how male victims of sexual assault often approached their experience with the gender myth-reinforced view, “I’m either a man or I’m a victim.”). For a review of male rape myths, see Jessica A. Turchik & Katie M. Edwards, *Myths About Male Rape: A Literature Review*, 13 PSYCHOL. OF MEN & MASCULINITY 211, 211–12 (2012) (discussing nine common ones).

¹⁸⁹ Jessica A. Turchik et al., *Utilization and Intensity of Outpatient Care Related to Military Sexual Trauma for Veterans from Afghanistan and Iraq*, 39 J. BEHAV. HEALTH SERVICES & RES. 220, 228 (2012) (noting “approximately equal numbers of men and women [Veterans Health Administration] users report MST”). Drawing upon these statistics, some suggest that, “because men outnumber women in the Armed Forces by \approx 6:1, there may actually be more sexually stressed men in the armed forces than there are women.” Murdoch et al., *supra* note 187, at 723.

¹⁹⁰ See Leora N. Rosen & Lee Martin, *Impact of Childhood Abuse History on Psychological Symptoms Among Male and Female Soldiers in the U.S. Army*, 12 CHILD ABUSE & NEGLECT 1149, 1158 (1996) (discussing how “childhood sexual abuse had an impact on symptomatology of both males and females”); Classen et al., *supra* note 19, at 112 (“[M]en with a history of CSA are 5.5 more

Furthermore, the challenge to their gender role and the expectations of military service are hypothesized to generate even greater psychological and emotional challenges that could adversely reflect the prosecutor's relationship with the victim.¹⁹²

Whether the victim is male or female, if he or she has sustained PTSD from sexual, combat, or other past traumatic events, the diagnosis creates a greater risk of STS for professionals. This is a significant fact for prosecutors because MST creates up to a nine-fold risk of developing PTSD.¹⁹³ Furthermore, it is often the case that "common legal practices may actually exacerbate the trauma of the original crime."¹⁹⁴ More specifically, a "negative interaction with the legal system is an important predictor of posttraumatic stress symptoms."¹⁹⁵ This often means that, regardless of the efforts of the prosecution to protect the sexual assault

likely to be assaulted in adulthood again by [a] perpetrator [whether an intimate or nonintimate partner].").

¹⁹¹ Zinzow et al., *supra* note 20, at 392 (discussing the increased risk of PTSD from combat if the service member has been sexually assaulted and noting "highest rates of PTSD among sexually assaulted and combat-exposed individuals"); Williams & Bernstein, *supra* note 171, at 142 ("[T]he combined sexual assault and combat experience can create a higher impact on psychological well-being of the veterans than sexual assault or combat exposure alone.").

¹⁹² See, e.g., Courtney Valdez et al., *Veterans Health Administration Mental Health Treatment Settings of Patients Who Report Military Sexual Trauma*, in *MILITARY SEXUAL TRAUMA: CURRENT KNOWLEDGE AND FUTURE DIRECTIONS* 232, 241 (Carolyn B. Allard & Melissa Platt eds., 2012) ("[M]ales are more vulnerable than females to the negative mental health consequences of MST."); Tim Hoyt et al., *Military Sexual Trauma in Men: A Review of Reported Rates*, in *MILITARY SEXUAL TRAUMA: CURRENT KNOWLEDGE AND FUTURE DIRECTIONS* 244, 245 (Carolyn B. Allard & Melissa Platt eds., 2012) (observing that "[p]sychological symptoms also appear to be more persistent and treatment resistant after MST in men than in women."). Specifically, "[b]ecause in our society adult sexual trauma is not viewed as normative for men, male victims of sexual assault often report greater levels of shock and surprise than their female counterparts and men's perceptions of their own gender role may be particularly threatened resulting in increased feelings of powerlessness and self-blame." (citation omitted). Amy E. Street et al., *Gender Differences in Experiences of Sexual Harassment: Data From a Male-Dominated Environment*, 75 *J. CONSULTING & CLINICAL PSYCHOL.* 464, 472 (2007).

¹⁹³ Cira Fraser, *Family Issues Associated with Military Deployment, Family Violence, and Military Sexual Trauma*, 46 *NURSING CLINICS OF NORTH AM.* 445, 450 (2011) ("Women veterans with a history of military sexual trauma are 9 times more likely to develop PTSD than women with no history of sexual assault."). See also Jennifer L. Strauss et al., *Is Military Sexual Trauma Associated with Trading Sex Among Women Veterans Seeking Outpatient Mental Health Care?*, in *MILITARY SEXUAL TRAUMA: CURRENT KNOWLEDGE AND FUTURE DIRECTIONS* 78, 81 (Carolyn B. Allard & Melissa Platt eds., 2012) ("MST is associated with a greater likelihood of developing PTSD than either childhood sexual abuse or civilian sexual assault." (citation omitted)); Kimmerling et al., *supra* note 25, at 2163 ("MST was associated with more than double the likelihood of receiving a mental health diagnosis."); Naomi Himmelfarb et al., *Posttraumatic Stress Disorder in Female Veterans with Military and Civilian Sexual Trauma*, 19 *J. TRAUMATIC STRESS* 837, 838 (2006) ("MST was 4 times more likely to cause PTSD than any other military trauma (including war-zone traumas).").

¹⁹⁴ Parsons & Bergin, *supra* note 16, at 182 (citation omitted).

¹⁹⁵ *Id.* at 183.

survivor, there are some inevitable threats—such as attacks on credibility¹⁹⁶—that often provoke stress responses and reactions that endanger the attorney through indirect exposure.

B. Relative Youth and Lack of Military Litigation Experience Among Trial and Trial Defense Counsel

The average Army Judge Advocate joins the military shortly after graduation from law school with a lack of prior experience in the courts.¹⁹⁷ He or she is usually in the early to mid-twenties and attended law school soon after obtaining a baccalaureate education.¹⁹⁸ These statistics are noteworthy because, for many beginning mental health professionals who are exposed to patient's traumatic material, youth and inexperience increase the risk of STS.¹⁹⁹ While experience practicing in the field and continued exposure to trauma victims can help professionals develop greater sensitivity to their own reactions and better methods to manage their personal responses,²⁰⁰ the short duration of time most Judge Advocates spend in a particular area of legal practice undercuts such desired outcomes. The opportunity to practice law sooner than civilian lawyers is a selling

¹⁹⁶ See, e.g., Major Beth A. Townsend, *Defending the "Indefensible": A Primer to Defending Allegations of Child Abuse*, 45 A.F. L. REV. 261, 291 (1998) (noting the pervasiveness of the "oft-used 'the child is lying'" singular defense to child sexual assault cases in military courts-martial). Seymour Wishman writes:

Weighing on me more heavily . . . was the undeniable fact that I had humiliated the victim—alleged victim—in my cross-examination of her. But, as all criminal lawyers know, to be effective in court I had to act forcefully, even brutally, at times My defense of myself had always been that there was nothing personal in what I was doing.

SEYMOUR WISHMAN, CONFESSIONS OF A CRIMINAL LAWYER: WHAT A CRIMINAL LAWYER DOES AND WHAT IT DOES TO HIM 6 (1981); see also Sarah E. Ullman & Stephanie M. Townsend, *Barriers to Working with Sexual Assault Survivors: A Qualitative Study of Rape Crisis Center Workers*, 13 VIOLENCE AGAINST WOMEN 412, 437 (2007) (noting the tragic irony that many sexual assault victims are targeted by perpetrators specifically "because of their vulnerability and their inability to be credible or tell the story in the way that law enforcement needs it to be told").

¹⁹⁷ Professional experience of the author serving as an active duty Army JA from 2003 to the present [hereinafter Author's Professional Experience]; see also Major Derrick W. Grace, *Sharpening the Quill and Sword: Maximizing Experience in Military Justice*, ARMY LAW., Dec. 2010, at 24–25 n.18 (noting concerns that "[t]he Army's emphasis on young attorneys . . . creates a system where everyone is always in the initial learning process").

¹⁹⁸ See, e.g., Author's Professional Experience, *supra* note 197; Grace, *supra* note 197, at 24 ("The Army's military justice . . . system suffers from a lack of experienced practitioners.").

¹⁹⁹ Ga-Young Choi, *Organizational Impacts on the Secondary Traumatic Stress of Social Workers Assisting Family Violence or Sexual Assault Survivors*, 35 ADMIN. IN SOC. WORK 225, 229 (2011) ("Many researchers agree that younger practitioners are more vulnerable to STS." (citation omitted)); see also Bride & Figley, *supra* note 27, at 320 ("Younger caregivers and those with less experience are at increased risk for STS.").

²⁰⁰ Choi, *supra* note 199, at 229 ("[O]lder individuals may cope better with STS as they have greater life experiences or better utilization of coping mechanisms gained from years of experiences.").

point for the JAG Corps in printed recruiting materials and often a reason motivating attorneys to join.²⁰¹ Notably, the Judge Advocate will usually have to move on to a different legal position at about the same time civilian prosecution and defense offices consider permitting their counsel to try serious offenses after required apprenticeships in misdemeanor and lower-level cases.²⁰² The military attorney's prompt ability to try cases like sexual assaults as a second-chair is an advantage that is not without a corresponding cost: STS will inevitably arise as a consequence of this on-the-job training.

C. Short Terms in Military Justice

Unlike the civilian practice of criminal law, military attorneys in Trial and Trial Defense Counsel billets are usually in these positions for a limited period of two years at most.²⁰³ Periodic reassignment, the staple of military service, is often seen as a benefit. However, military attorneys are unlike many career defense attorneys or prosecutors in civilian positions who routinely draw upon the ideals that brought them to that particular calling in the first place as a source of strength when confronted by traumatic material.²⁰⁴ For junior attorneys involved in the prosecution or defense of sexual assault cases, the benefit of a periodic "fresh start" can easily become a detriment. Recognizing that denial and repression are the most common responses of professionals to STS symptoms, military attorneys who feel the effects of exposure to trauma have a tremendous incentive to avoid the problem in the hopes of biding their time and moving on to the next assignment.²⁰⁵ As far too many professionals soon learn when they must visit the

²⁰¹ See, e.g., U.S. DEP'T OF NAVY, GUIDE TO THE U.S. NAVY JAG CORPS 8, www.jag.navy.mil/careers (last visited April 27, 2014) ("Navy Judge [sic] advocates will participate in litigating criminal cases, often at the felony level, and have opportunities to serve as lead counsel within 18–24 months after being certified as a judge advocate.").

²⁰² See, e.g., Randy Bellows, *Notes of a Public Defender*, in THE SOCIAL RESPONSIBILITIES OF LAWYERS: CASE STUDIES 69, 73, 96 (Philip B. Heymann & Lance Liebman eds., 1988) (describing the longstanding rule for public defenders to spend nine months on a juvenile court docket and elevation to serious felonies only after completion of a second full year of trying misdemeanors and minor felonies, and discussing a parallel requirement for prosecutors to have "the seasoning of 15 or 20 misdemeanor trials" as a prerequisite for handling felony offenses).

²⁰³ Grace, *supra* note 197, at 25 ("JAs normally will serve in a [Trial Counsel] position for eighteen to twenty-four months.").

²⁰⁴ See, e.g., Barbara Allen Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175, 177–78 (1983) (discussing five major reasons why *civilian* attorneys become defense counsel, such as "political activism," which would be quite incompatible with lawyering in the military justice system); CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold eds., 1998) (exploring sources of commitment among even attorneys who defend clients charged with the most repulsive crimes).

²⁰⁵ Consider the view toward transfer of a parole officer who exclusively handled sex offenders: "[T]he only way for him or her to cope was to switch units[:] 'I've been dealing with [sex offenders] . . . [a]nd it's been very challenging, but I'm just switching over to a generic unit, a rural

hospital or seek mental health counseling due to impaired performance and health, STS is at its worst when its effects are unaddressed.²⁰⁶

Although some criminal law specialty positions now exist in the military primarily to respond to a growing need for expertise in the prosecution of sexual assault cases,²⁰⁷ these positions are limited in number,²⁰⁸ and the military predominately aims for generalist attorneys who are capable of working in other functional areas, such as contract and fiscal law, administrative law, personnel services (claims, legal assistance), and operational law.²⁰⁹ In the words of Army Major Derrick Grace, an experienced litigator, the premium on generalists “often means that once the trial counsel . . . obtains a minimum level of experience and proficiency, the Army assigns them to another position so they can begin to obtain a base knowledge of another area of the law.”²¹⁰ With the increasing costs of court-martial explaining their declining numbers over the past decade,²¹¹ many Trial Counsel (75%) tried less than six cases while deployed and most (81%) of Trial Defense Counsel are trying less than ten contested cases (anywhere) during their short tours in military justice positions.²¹² A sizeable majority (62%) of defense counsel are trying less than five contested cases.²¹³

unit, because I’ve just burned out. You are their victim also.” Severson & Pettus-Davis, *supra* note 52, at 14 (citing a parole officer).

²⁰⁶ See *infra* Part V.

²⁰⁷ Grace, *supra* note 197, at 24–30 (describing the Army’s implementation of the Special Victim Prosecutor and Litigation Army Skill Identifier programs and the Air Force and Navy’s development of “Military Justice Career Tracks” to address “perceived deficiencies in the administration of [military] justice,” such as challenges in sexual assault cases that are beyond the capabilities of most young Trial Counsel).

²⁰⁸ Note, for example, that the Army’s implementation of the Special Victims Prosecutor program began with only 15 positions Army-wide. Memorandum from Lieutenant General Scott Black, The Judge Advocate Gen., U.S. Army to Judge Advocate Legal Services Personnel, subject: Policy Memorandum 09-3: Special Victim Prosecutors ¶ 2, at 1 (May 29, 2009) [hereinafter Black Memorandum] (noting how, in 2009, “[t]he Secretary of the Army . . . directed the addition of 15 [Special Victim Prosecutors] dispersed across the Army who will focus exclusively on litigation and training—with an emphasis on sexual assaults and family violence.”).

²⁰⁹ See, e.g., Editorial, *International and Operational Law Note*, ARMY LAW., Apr. 1993, at 26 & n.4 (discussing JAG functional areas in administrative law, claims, contract law, criminal law, international law, legal assistance, and operational law).

²¹⁰ Grace, *supra* note 197, at 25.

²¹¹ See, e.g., U.S. Ct. of Appeals for the Armed Forces, Annual Reports, available at http://www.armfor.uscourts.gov/newcaaf/ann_reports.htm (tabulating in the appendices of the *Annual Reports of the Committee on Military Justice* year-by-year statistical summaries for numbers of Bad-Conduct and General Courts-Martial and corresponding results, such as the decline from 2,731 Bad-Conduct Discharge-Special courts-martial and 1,671 General Courts-Martial across the services in 2001 to the 2011 rates of 1,121 Bad-Conduct-Special courts-martial and 1,078 General Courts-Martial).

²¹² Grace, *supra* note 197, at 25.

²¹³ *Id.*

Such widespread inexperience certainly contributes to a lack of preparation for the disarming effects of traumatizing case material, which could likely come as a case of first-impression for the Defense Counsel or the Assistant Trial Counsel as she second-chairs and assists the Special Victim Prosecutor.²¹⁴ Notably, even for supervisors of these first-term litigators, a 2010 survey revealed “troublesome” statistics that “seventy percent of [Senior Trial Counsel] have less than ten contested courts-martial . . . [,] 22% have less than five contested cases,” and over half of the Senior Defense Counsel had tried less than ten contested courts-martial, contributing to a situation in which, later in their careers, Judge Advocates with limited experience were elevated to criminal law supervisory roles.²¹⁵ The multitude of short-timers in both prosecution and defense billets create deficits of experience and information-sharing. Furthermore, the lack of experience in trying sexual assault cases can increase the magnitude of experienced attorneys’ STS reactions.

D. Too Few Sexual Assault Specialists

The Army Judge Advocate General’s Corps created a Special Victim Prosecutor program specifically because these cases are “difficult.”²¹⁶ This was also the impetus for the Air Force’s and Navy’s Military Justice Career Track.²¹⁷ Despite initiatives to capitalize on courtroom experience, manpower and budget constraints limit the numbers of litigation specialists throughout the corps.²¹⁸ Normally, they serve multiple jurisdictions, which have so many accumulated cases that it is often difficult for them to manage case preparation without relying on the assistance of the less-experienced Trial Counsel who are organic to the units

²¹⁴ *Id.*

²¹⁵ *Id.* at 25–26 (observing how the nature of assignments in the Army’s military justice [MJ] system “means that JAs without MJ experience are at times placed in senior litigation positions in order to obtain their MJ time”).

²¹⁶ Gina Cavallaro, *JAG Corps, CID Gear up to Fight Sexual Assault*, ARMY TIMES (Feb. 7, 2009), <http://www.armytimes.com/article/20090207/NEWS/902070310/JAG-Corps-CID-ready-to-fight-sexual-assault> (citing Lieutenant General Scott Black, then-The Judge Advocate General of the Army, for the proposition that sexual assault cases are “very difficult cases to try so we can always do better,” especially to “ensur[e] we’re doing the very best we can to represent the victim’s interests.”); Lieutenant Colonel Maureen A. Kohn, *Special Victim Units—Not a Prosecution Program but a Justice Program*, ARMY LAW. 68, 71 (March 2010) (explaining many reasons for “the difficulty of prosecuting sexual assault crimes”).

²¹⁷ Grace, *supra* note 197, at 24–30.

²¹⁸ See, e.g., Lieutenant General Scott C. Black, *Special Victim Prosecutors and Highly Qualified Experts in Military Justice*, TJAG SENDS, A MESSAGE FROM THE JUDGE ADVOCATE GENERAL, Vol. 37, no. 18 ¶ 2 (Jan. 2009) (observing how Special Victim Prosecutors “are not JA authorizations taken from other JA missions, but are an actual addition of . . . Judge Advocates to [the] Corps”).

at each installation.²¹⁹ While this joint prosecutorial responsibility for sexual assault cases can be viewed as a necessary component of training and mentoring new counsel in complex cases,²²⁰ it also translates into the reality that relatively inexperienced counsel may not always have the benefit or expertise of the senior specialist when the junior attorneys are exposed to traumatic material, assuming that the specialist even has knowledge of STS.

E. Diminished Expertise in Litigation During the Global War on Terror

Within the Army, but also other services, the JAG Corps responded to wartime needs by restructuring legal support to deploying units. Under the concept of modularity, the Army expanded organic staff elements in each of its combat brigades to make them function more like divisions, capable of combined-arms operations on smaller scales. The JAG Corps thus relocated attorneys from their traditional home at a single Office of the Staff Judge Advocate to a two-attorney—Operational Law and Trial Counsel—dyad located within their respective brigade headquarters.²²¹ While the benefit of this relocation and realignment surely made the attorneys more accessible to the command, it diminished the ability to standardize training and mentoring, often resulting in a brigade level emphasis on preparation for upcoming deployments rather than litigation skills-building.²²² During deployments, most prosecutors had limited ability to practice law in the courtroom given the logistical difficulties of assembling panels in war zones.²²³ Although the pendulum has returned to an emphasis on litigation skills as combat operations have declined in recent years, substantial gaps in experience make the challenge of STS more difficult to appreciate and resolve. Most training in sexual assault litigation sponsored by the

²¹⁹ *Id.* (noting how the Special Victim Prosecutors are assigned to the Army's "busiest jurisdictions"); see also Professional Experience of the Author serving as Chief of Military Justice at Fort Benning, Georgia from 2011–2013.

²²⁰ Black Memorandum, *supra* note 208, at ¶ 9b, at 2–3 ("I do not expect a [Special Victim Prosecutor] to sit first chair on every case, but to use appropriate cases as opportunities to teach and mentor other JAs in their professional development.").

²²¹ Grace, *supra* note 197, at 28 (describing notable shifts in the structure of JAG offices based on wartime needs and later attempts to remediate such problems).

²²² Colonel Charles N. Pede, *Military Justice, the Judge Advocate and the 21st Century*, ARMY LAW. 32, 33 (April 2011) ("New counsel, especially trial counsel . . . have been deprived of the synergy and immersion that used to be provided by a centralized military justice office, where young counsel could learn from and consult with their more experienced colleagues."); Grace, *supra* note 197, at 24, 28 ("The Army harmed its [Trial Counsel] when it sent them to the brigades as part of the Army transformation to a brigade-centric modular Army . . .").

²²³ See, e.g., Major Franklin D. Rosenblatt, *Non-Deployable: The Court-Martial System in Combat from 2001 to 2009*, ARMY LAW. 12, 12 (Sept. 2010) ("[D]eployed commanders and judge advocates exercised all possible alternatives to avoid the crushing burdens of conducting court-martial, from sending misconduct back to the home station, to granting leniency, to a more frequent use of administrative discharge procedures.").

military has focused more on advocacy tradecraft than strategies for responding to traumatic material.²²⁴

F. Greater Scrutiny Over Sexual Assault Cases and Pressure to Convict

In 2009, while dual campaigns still raged in Iraq and Afghanistan, Representative Jane Harman addressed the military's third, invisible, war against sexual assault victims.²²⁵ Confronting statistics that sexual assault reporting had increased 73% from 2004 to 2006,²²⁶ and the practical consequence that "a female soldier in Iraq is more likely to be raped by a fellow soldier than killed by enemy fire," she pondered "[W]here is the outrage?"²²⁷ With a history of sordid scandals thrusting military sexual assault uncomfortably into the public arena, this was not the first time that legislators voiced concern.²²⁸ This new outrage, however, was different in an important respect. Rather than being directed at the perpetrators alone, it now embraced commanders—and their Judge Advocates.

As evident in studies of military members and MST survivors, some believe that MST happens so often that it is simply a part of military culture.²²⁹ As shown in the illustration below, portraying a sexual assault decoration on a survivors' uniform, this sentiment apparently extends to some element of the public in a mocking, beyond matter-of-fact, manner:

²²⁴ See generally Crawford, *supra* note 37 (confirming the lack of standardized training on secondary trauma for Trial Counsel in the Army's many sexual assault litigation specialty courses).

²²⁵ See generally *THE INVISIBLE WAR* (Docurama Films 2012) (2012 Academy Award-nominated documentary detailed the nature of this third war in painstaking detail by examining the lives of numerous military sexual assault survivors).

²²⁶ Jane Harman, *Rapists in the Ranks: Sexual Assaults are Frequent, and Frequently Ignored, in the Armed Services*, L.A. TIMES (Home ed.), Mar. 31, 2008, at A15.

²²⁷ Press Release, Harman Renews Push to Prevent Sexual Assault in Military (Jan. 27, 2009), available at <http://usmvaw.com/tag/jane-harman/>.

²²⁸ See, e.g., GREGORY L. VISTICA, *FALL FROM GLORY: THE MEN WHO SANK THE U.S. NAVY* (1997 rev. ed.) (describing the legislative fallout from the Tailhook scandal and other widely-publicized incidents tied to sexual assault and sexual harassment in the United States Navy).

²²⁹ Sabrina Rubin Erdely, *Inside the Military's Culture of Sexual Abuse, Denial, and Cover-Up*, ROLLING STONE, Feb. 14, 2013, at 56, 58 (relating the comments of multiple MST victim former-Lance Corporal Nicole McCoy: "I thought it was just a normal thing in the military, almost like a hazing process It seemed like everyone gets raped and assaulted and no one does anything about it; it's like a big rape cult.").



Fig. 6

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Hardly comical, the current mobilization to root-out the perceived “boys club”²³⁰ has, at times, encompassed the military attorney, questioning his or her functionality in the prosecutorial role, doubting his or her expertise to try sexual assault cases, and ultimately viewing the JA as a part of the problem.²³¹ With the requirement to account for disposition of all sexual assault complaints in frequent “data calls,” and an emphasis on results, especially conviction rates, the JA faces added pressure that hardly subtracts from already-elevated STS risks. In climates where critics have urged that commanders’ promotions be tied to the manner in which they handle sexual assault cases within their units,²³² some fear that

²³⁰ Harman, *supra* note 226 (“The absence of rigorous prosecution perpetuates a culture tolerant of sexual assault—an attitude that says ‘boys will be boys.’”).

²³¹ Prosecutors are blamed for their lack of expertise in the field, especially when considering acquittal rates on major sexual assault charges, prompting some critics to push to exclude first-term Judge Advocates from sexual assault prosecutions, in favor of attorneys who have served for several years. See, e.g., Charles “Cully” Stimson, Issue Brief #3955 on National Security and Defense, *JAG Corps and Reforming the Military Justice System*, THE HERITAGE FOUNDATION (June 3, 2013), <http://www.heritage.org/research/reports/2013/06/jag-corps-and-reforming-the-military-justice-system> (recommending that “the service judge advocates send new prosecutors . . . to larger commands first, where they will handle only misdemeanor cases for at least five years, including no felony cases that are referred to special courts-martial”); see also Erdely, *supra* note 229 at 56, 58 (portraying a Judge Advocate prosecutor as a central figure in an effort to blame a sexual assault victim and protect a perpetrator).

²³² Editorial, *Eliminating Sexual Assault Should be a Top DoD Priority*, ALLIANCE FOR NAT’L DEFENSE ADVOCATE 6, 6 (2d Qtr. ed., 2009) (urging that legislators “[i]nclude in performance reviews the extent to which commanders are successful in fostering an environment in which

commanders are now pressured to send all sexual assault allegations forward to a General Court-Martial, regardless of any exculpatory evidence established at preliminary hearings.²³³ This pressure, in placing a greater premium on conviction, makes it more likely that the JA will personally identify with the case—and its outcome.²³⁴ The removal of a senior prosecutor in a recent high-profile sexual assault court-martial underscores the potential for such concerns.²³⁵

In an environment where the premium on convictions is great, this adds significant pressure to cases that would not exist without such tight scrutiny and oversight, especially upon newer counsel who may be assisting seasoned Special Victims Prosecutors. As reflected in the 2009 Defense Task Force Report on *Sexual Assault in the Military Services Defense Sexual Assault Report*, the military is an environment where trial counsel are prosecuting sexual assault cases that most district attorneys would never touch.²³⁶ These conditions can surely increase the impact of an attorney's exposure to traumatic material in a sexual assault case. In this regard, military prosecutors are not unlike parole officers who supervise sex offenders in an environment of great concern for re-offense rates during the course of post-conviction supervision. In that context, "[i]f something does go wrong,

individuals can serve without fear of sexual assault. Commanders who succeed should be recognized and commanders who fail should be penalized."); H. Con. Res. 28, 11th Cong. (2009) (offering guidance that would "[r]equire commanders to be held accountable for sexual assaults and rapes that occur in their units and provide justification for disposing of cases through non-judicial punishment or other administrative actions").

²³³ See, e.g., Marisa Taylor & Chris Adams, *Military's Newly Aggressive Rape Prosecution Has Pitfalls*, MCCLATCHY-TRIB. NEWS SERVICE, Nov. 28, 2011 (citing statistics on rising rates of sexual assault prosecutions, concerns over prosecution of extremely weak and "bogus" cases, and noting "in the military, the decision-maker is an admiral or a general who is not going to put his career at risk on an iffy rape case by not prosecuting it. It's easy for him to say 'Prosecute it.' If a jury acquits or convicts, than he can say justice was done either way."). In a Navy Judge Advocate's experience, "There is a pressure to prosecute, prosecute, prosecute. When you get [an allegation] that's actually real, there's a lot of skepticism. You hear it routinely: 'Is this a rape case or is this a Navy rape case?'" *Id.*

²³⁴ ARIE W. KRUGLANSKI, THE PSYCHOLOGY OF CLOSED MINDEDNESS 21–22 (2004) ("[T]he higher the individual's need for closure, the briefer the extent of information processing in which they would engage"). Cf. Dainne L. Martin, *The Police Role in Wrongful Convictions: An International Comparative Study*, in *WRONGLY CONVICTED: PERSPECTIVES ON FAILED JUSTICE* 77, 80 (Sandra D. Westervelt & John A. Humphrey eds., 2005) ("Cases from all jurisdictions demonstrate that, in circumstances of heightened public pressure for arrest and conviction, one or more . . . mechanisms that can result in wrongful convictions are more likely to occur.").

²³⁵ See Alan Blinder & Richard A. Oppel Jr., *How a Military Sexual Assault Case Foundered*, N.Y. Times, Mar. 13, 2014, at A1 (describing the eventual nervous breakdown of a lead prosecutor in the case against Brigadier General Jeffrey A. Sinclair, as well as the pressure to pursue certain charges for the appearance of responding to the military's sexual assault epidemic).

²³⁶ U.S. DEP'T OF DEF., TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES, REPORT OF THE DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES 81 (Dec. 2009) (acknowledging Judge Advocates' recognition that they "prosecute a lot [of cases] that [their civilian] counterparts say they ethically could not prosecute because they have serious reservations that enough facts exist to support all elements of the allegation.").

officers undergo administrative scrutiny that although legitimate is also designed to be critical—and, when something goes seriously wrong, legislators, advocates, lawyers, judges, and juries often have something to say about what happened.”²³⁷ Notably, nearly identical pressures have been found to increase susceptibility for—and intensify the experience of—STS.²³⁸

G. Significant Numbers of Accused Service Members with Combat PTSD

There is something different about providing services to the civilian population and providing them to a military one: the greater likelihood of traumatized clients.²³⁹ An interesting fact has emerged from studies of incarcerated veterans. While one might expect physical assault or drugs to be the leading basis for imprisonment in accordance with the media’s widespread reports of veteran criminality,²⁴⁰ sexual assault is a leading offense responsible for the incarceration of U.S. veterans. In fact, while only 9% of civilian offenders were incarcerated in American prisons for sexual assault including rape, 23%—more than double the number—of veterans were confined for these lurid offenses.²⁴¹ While veteran or combat status provides no excuse for sexual assault, considering that war-traumatized veterans are at great risk of incarceration,²⁴² a significant number of military sex offenders likely have combat experience and suffer from PTSD or Traumatic Brain Injury—the signature injuries of the wars in Iraq and Afghanistan.²⁴³ For Trial Defense Counsel, specifically, whether for mitigation

²³⁷ Severson & Pettus-Davis, *supra* note 52, at 19.

²³⁸ *Id.*

²³⁹ Bride & Figley, *supra* note 27, at 316 (noting a difference between STS among civilian and military caregivers stemming largely from the nature of the trauma directly experienced by military clients).

²⁴⁰ See, e.g., Justin Holbrook & Sara Anderson, Widener Law Sch. Legal Studies Research Paper Series No. 11-25, *Veterans Courts: Early Outcomes and Key Indicators for Success*, at 7 (describing the popular media’s perpetuation of the “Wacko-Vet Myth” that nearly all veterans returning from combat are ticking time-bombs), available at <http://ssrn.com/abstract/1912655>.

²⁴¹ MARGARET E. NOONAN & CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: VETERANS IN STATE AND FEDERAL PRISON, 2004 1 (May 2007).

²⁴² See, e.g., Eric B. Elbogen et al., *Criminal Justice Involvement, Trauma, and Negative Affect in Iraq and Afghanistan War Era Veterans*, J. CONSULTING & CLINICAL PSYCHOL. 1 (Oct. 1, 2012) (advance online publication doi: 10.1037/s0029967) (discussing recent research results indicating combat veterans’ greater likelihood of incarceration linked to the symptoms of their mental health conditions); Major John W. Brooker et al., *Beyond “T.B.D.”: Understanding VA’s Evaluation of a Former Servicemember’s Benefit Eligibility Following Involuntary or Punitive Discharge from the Armed Forces*, 214 MIL. L. REV. 1, 251–60, app. I (2012) (exploring veteran criminality statistics and highlighting the connection between untreated combat stress disorders and criminal activity).

²⁴³ With a conservative estimate of 20% of Iraq and Afghanistan veterans suffering from PTSD, which only multiplies with increased deployments, statistics alone suggest that a number of military sexual assault offenders will occupy this category. Brooker et al., *supra* note 242, at 9 n.1 (discussing estimates of PTSD prevalence).

purposes at sentencing or during the merits of a case, they have legal obligations to at least explore the issue of combat trauma and related diagnoses.²⁴⁴ Through their course of probing the accused's combat experiences, the attorney may be exposed to his stress reactions and will likely have to deal with exposure to both the results of the charged sexual misconduct in combination with the combat trauma.²⁴⁵ Considering how the commission of a crime may be enough to traumatize its own perpetrator,²⁴⁶ the confluence of trauma types can likely affect a military defense counsel as much as a military prosecutor who has explored a victim's cumulative trauma, substantially increasing the risk of STS.

H. Attorneys with Their Own Military Stress and Traumatic Experiences from Combat

Litigators, no doubt, face uncommon and severe stress as a byproduct of the legal profession.²⁴⁷ Yet, the "operational stress" of military service exists above and beyond the forensic stress of litigation.²⁴⁸ Professionals "serving in uniform[] . . . are thought to be at a greater risk than civilian professionals for developing secondary stress reactions due to both being exposed to the suffering of those they are [assisting] and to the demands associated with military operational stress."²⁴⁹ The occupation of American Soldier, for example, was recently listed as the most stressful job in America, beyond police or other first-responders.²⁵⁰ Ironically, the

²⁴⁴ See generally Brockton D. Hunter & Ryan C. Else, *Pre-trial Preparation and Seeking Resolution*, in ATTORNEY'S GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT 437 (Brockton Hunter & Ryan C. Elise eds., 2014) (discussing defense counsel responsibilities to explore combat-related defenses in support of substantive defenses to charges as well as bases for mitigation during sentencing).

²⁴⁵ Figley & Beder, *supra* note 30, at 285 ("Working with war Veterans is especially challenging because war often provokes behaviors that are extremely difficult to repeat and to hear.").

²⁴⁶ See generally J. Vincent Aprile II, *PTSD: When the Crime Punishes the Perpetrator*, 23 CRIM. JUST. 39, 39 (2009) (discussing the offender's behavior as the source of his own traumatization).

²⁴⁷ ROGER HAYDOCK & JOHN SONSTENG, TRIAL ADVOCACY BEFORE JUDGES, JURORS, AND ARBITRATORS 33 (3d ed. 2004) ("Advocates suffer stress [due to] the pressure to win, unrealistic expectations, fear of failure, money, ego, physical discomfort, fatigue, anxieties, tension, peer pressure, neglect of personal and family matters, emotional withdrawal, [and] preoccupation with a case.").

²⁴⁸ Rubin et al., *supra* note 45, at 72 ("Military operational stress involves providing services to military personnel while in dangerous zones, having to participate in multiple deployments, lack of reprieve time and competing demands for the ethical treatment of the client versus the provider (the military as the employer)." (citation omitted)).

²⁴⁹ *Id.*

²⁵⁰ See, e.g., Kyle Kensing, *The 10 Most Stressful Jobs of 2013*, CAREERCAST.COM, <http://www.careercast.com/jobs-rated/10-most-stressful-jobs-2013> (last visited April 27, 2014) ("Jobs in the military once again top the CareerCast.Com Jobs Rated rankings of the most stressful jobs for 2013."); Mary Ann Pechacek et al., *Provider Fatigue and Provider Resiliency Training*, in COMBAT

very factor that makes military sexual assault victims more susceptible to the psychological harm of an assault than civilian sexual assault victims is a contributing factor that makes military attorneys more susceptible to derivative secondary trauma.²⁵¹ Combat deployments add an additional risk-enhancing fold. As one traumatologist notes, a professional in uniform “may be in the face of danger, help those in danger, be alone in danger, and then rise the next day to serve those in danger. This situation occurs in the life of the military care provider on a regular basis.”²⁵²

A byproduct of an attorney’s deployment to combat is his or her exposure to traumatic events in combat zones including, but not limited to, the death or serious injury of close friends, direct or indirect fire attacks, or the sight of dead bodies, all of which have been common in the Iraq and Afghanistan wars.²⁵³ Combat trauma does not discriminate by occupational specialty and equally affects all uniformed service members, oftentimes regardless of whether they are located within the walls or perimeter of a forward operating base or patrolling the unsecured roads of a village. For attorneys who experienced some form(s) of combat trauma, further exposure to traumatic material from sexual assault cases can trigger significant STS responses. To this end, traumatic material has a magnetic effect with other traumatic material, without reference to its type.²⁵⁴ As succinctly explained by a traumatologist:

[A] man who experienced abuse as a child and then served in a combat zone in war can start experiencing traumatic symptoms by witnessing a car accident years later. If none of his previous traumas were resolved,

AND OPERATIONAL BEHAVIORAL HEALTH 375, 376 (2011) (“The stress of contemporary combat and operational environments is unlike that experienced by physicians, nurses, or chaplains in the civilian sector.”).

²⁵¹ Naomi Himmelfarb et al., *Posttraumatic Stress Disorder in Female Veterans with Military and Civilian Sexual Trauma*, 19 J. OF TRAUMATIC STRESS 837, 844 (2006) (“[A]ctive duty soldiers experience higher than normal levels of stress and that this high arousal puts them at greater risk for PTSD when assaulted.”).

²⁵² Pechacek et al., *supra* note 250, at 378.

²⁵³ Jennifer J. Vasterling et al., *PTSD Symptom Increases in Iraq-Deployed Soldiers: Comparison with Nondeployed Soldiers and Associations with Baseline Symptoms, Deployment Experiences, and Postdeployment Stress*, 23 J. OF TRAUMATIC STRESS 41, 47 tbl.2 (2010) (describing common deployment experiences reported by 670 active duty service members who served in Iraq between April 2003 and September 2006, many of which could cause PTSD, such as 97.9% who “[r]eceived hostile incoming fire from small arms, artillery, rockets, mortars, or bombs”).

²⁵⁴ Tracy Woodard Meyers & Thomas A. Cornille, *The Trauma of Working with Traumatized Children*, in TREATING COMPASSION FATIGUE 39, 51 (Charles R. Figley ed., 2002) (“[W]orkers who have experienced previous traumas need to be made aware that these previous experiences may make them more vulnerable to STS symptoms. Certain experiences—such as witnessing a death, experiencing a serious injury, or other trauma, such as rape—may make workers more prone to becoming symptomatic.”).

they may have been bubbling below the surface, waiting for one more traumatic event to occur before the symptoms exploded.²⁵⁵

This interaction of trauma types in triggering an STS response is vital to acknowledge since military attorneys have, during deployments, likely been exposed to prior military-specific traumatic events that civilian attorneys have not.

Although it can be beneficial for a sex crimes attorney to draw on his or her own prior sexual trauma (or any variation of trauma) in providing client services,²⁵⁶ there are many risks inherent in engaging clients from such a personal level.²⁵⁷ While there have been mixed results on the extent to which former sexual assault victims are vicariously traumatized by clients who suffered similar violations, researchers generally note a heightened risk of STS specifically.²⁵⁸ Furthermore, they provide strict warnings to avoid such helping relationships if the trauma worker's own trauma is unresolved in any way.²⁵⁹ In sum, the Trial and Defense Counsel's status as a military officer, and any additional traumatic experiences during the course of deployments, will increase their risk for STS from the sexual assault cases to which they are assigned.

I. Greater Stigma for Seeking Mental Health Assistance in the Military

Attorneys, especially prosecutors, largely pride themselves on being mentally tough, willing to uphold the dignity of their victims and to avenge them and society for the perpetrator's dual transgressions.²⁶⁰ This "proud warrior" posture

²⁵⁵ Catanese, *supra* note 8, at 36.

²⁵⁶ Noga Zerubavel & Margaret O'Dougherty Wright, *The Dilemma of the Wounded Healer*, 49 PSYCHOTHERAPY 482, 482 (2012) ("The therapist's own past or present wounds can facilitate empathic connection with clients . . .").

²⁵⁷ See, e.g., *id.* (discussing inherent risks of unresolved trauma); see also Salston & Figley, *supra* note 17, at 170 ("If the traumatic experiences 'touch' on any personal traumatic history, the [professional] may become somewhat numb and not hear the client.").

²⁵⁸ Salston & Figley, *supra* note 17, at 170 (discussing greater levels of cognitive disruption in those trauma workers with their own personal trauma histories).

²⁵⁹ See, e.g., Dutton & Rubinstein, *supra* note 17, at 98 (discussing how professionals with trauma histories "are likely to require deliberate personal attention to their own healing process in order to manage . . . STS reactions"); Mary S. Cerney, *Treating the "Heroic Treaters," in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED* 131, 139 (Charles R. Figley ed., 1995) ("Until therapists come to terms with their own memories and their own trauma, their work with trauma victims cannot proceed.").

²⁶⁰ See Alafair S. Burke, *Prosecutorial Passion, Cognitive Bias, and Plea Bargaining*, 91 MARQ. L. REV. 183, 186-187 (2008) ("The doing of justice is carried out in a 'muscular,' 'unsentimental' way, in a 'tradition of machismo, of the prosecutor as aggressive trial lawyer facing down the lawbreaking adversary.'") (citing Bruce A. Green, *Why Should Prosecutors "Seek Justice"?*, 29 FORDHAM URB. L.J. 607, 609 (1999)); see also Crawford, *supra* note 37, at 9 (observing how in order to cope with traumatic case material, a JAG "shuts off his emotions and, like any good Army officer, picks up the mission and drives on").

is largely premised upon a singular notion of strength that can be undermined by the admission that the attorney feels overwhelmed or overcome by emotional feelings in response to evidence in a case.²⁶¹ For that matter, such a disclosure could be viewed as weakness in the ability to zealously represent the Government.²⁶² In addition, because military prosecutors are also commissioned officers in the Armed Forces, they are considered to be *de facto* leaders who are expected to always set the example.²⁶³ On top of constant pressures to demonstrate strength—and not weakness—as an advocate, these officers face many of the same additional pressures as service members who suffer from emotional difficulties. Despite concerted efforts by the military to de-stigmatize help-seeking, the internal pressure to endure the mental pain without mental health assistance remains pervasive, not only within the American military, but throughout the militaries of at least four of America's military allies.²⁶⁴ This military stigma against help-seeking, primarily as not to appear weak to peers, which is little different from the law enforcement stigma,²⁶⁵ is a great impediment to the mitigation of STS among military attorneys. The consequence of this stigma is clear: When attorneys resort to uninformed or impromptu self-help, they risk exacerbating the detrimental effects of the stressors as well as impairing their legal judgment as advocates:

Attorneys . . . are often unaware that [STS] even exists and often attribute symptoms of [VT] to burnout, overwork, personal weakness, or the need to develop a “thicker skin.” The danger of this ignorance is that it often leads to responses and coping strategies that are ineffective and fail to recognize or acknowledge the true nature of the attorney's experience.²⁶⁶

Too often, this practically equates to waiting until one is affected by serious physical and mental calamities before pursuing professional help, when it would have been possible to easily resolve the matter with earlier guidance.²⁶⁷

²⁶¹ Burke, *supra* note 260, at 187–88.

²⁶² Bandes, *supra* note 14, at 342 (“[A]cknowledging the role of emotion may brand one as not merely weak, but downright unlawyerlike.”).

²⁶³ Kensing, *supra* note 250, at 1 (“Soldiers’ lives are always at risk, but military officers are also responsible for the well-being of their troops. No task could score higher on the stress scale’s metric than being responsible for the life of another person.”).

²⁶⁴ See Matthew Gould et al., *Do Stigma and Other Perceived Barriers to Mental Health Care Differ Across Armed Forces?*, 103 J. ROYAL SOC’Y OF MED. 148, 148 (2010) (noting similarities among stigma and perceived barriers to psychological care in U.S., U.K., Australian, New Zealand, and Canadian militaries).

²⁶⁵ See Part II.D.

²⁶⁶ Fines & Madsen, *supra* note 28, at 992.

²⁶⁷ Figley & Beder, *supra* note 30, at 282 (“Many caregivers who experience symptoms of [STS] may attempt to ignore their distress until a threshold of discomfort is reached and their effectiveness in their work begins to suffer.”).

IV. DISTINGUISHING MECHANISMS FOR SECONDARY TRAUMATIZATION AND RELATED CONSEQUENCES

A. Universal Mechanisms and Consequences

1. Common Consequences of STS Related to Sexual Assault Cases

Some researchers, even those mindful of the academic distinctions between all of the terms related to STS, suggest that because they are so intertwined, it is like “splitting hairs” to delineate between VT, CF, CT, and the other names for STS-invoking phenomena.²⁶⁸ All of these are unquestionably mechanisms by which one acquires STS,²⁶⁹ and all relate to professionals “responding to their own personal reactions to what an individual client says or does.”²⁷⁰ Many scholars observe that the different terms are interchangeable at a practical level,²⁷¹ considering the same consequences faced by professionals who endure STS and the similar manner in which the symptoms can be assessed and treated, regardless of mechanism.²⁷² Although no study to date has thoroughly compared prosecutor and defense counsel STS in relation to sex crimes cases, researchers have compared STS effects among professionals who work exclusively with sexual assault victims and those who work exclusively with perpetrators.²⁷³ There are, indeed, many identical effects, regardless of the nature of this trauma work. Combining these studies with the scholarship involving attorneys confirms the following shared effects of STS on both prosecutors and defense attorneys who work with sexual assault cases:

²⁶⁸ Rubin & Weiss, *supra* note 45, at 69; *see also* Pechacek et al., *supra* note 250, at 376 (“A number of terms have been used to capture secondary reactions to trauma including ‘burnout,’ ‘secondary victimization,’ ‘secondary traumatic stress disorder,’ ‘secondary survivor,’ ‘vicarious traumatization,’ ‘traumatic countertransference,’ and ‘compassion fatigue.’”).

²⁶⁹ Motta et al., *supra* note 48, at 54 (contemplating VT and CF as methods leading to “the acquisition of trauma responses”).

²⁷⁰ Rubin & Weiss, *supra* note 45, at 69.

²⁷¹ Pechacek et al., *supra* note 250, at 376 (“Although each of the concepts was originally developed in a specific context with individual nuances, they have also been used interchangeably in connection with the phenomenon of secondary trauma”); *see also* Motta et al., *supra* note 48, at 54 (“Secondary trauma has been used globally to encompass ‘vicarious trauma’ and ‘compassion fatigue.’”); Rubin & Weiss, *supra* note 45, at 67–68 (noting how VT and CF are “virtually synonymous” with Secondary Trauma).

²⁷² Rubin & Weiss, *supra* note 45, at 69.

²⁷³ *See* Inke Way et al., *Vicarious Trauma: A Comparison of Clinicians who Treat Survivors of Sexual Abuse and Sexual Offenders*, 19 J. INTERPERSONAL VIOLENCE 49, 49 (2004); Rich, *supra* note 7, at 75.

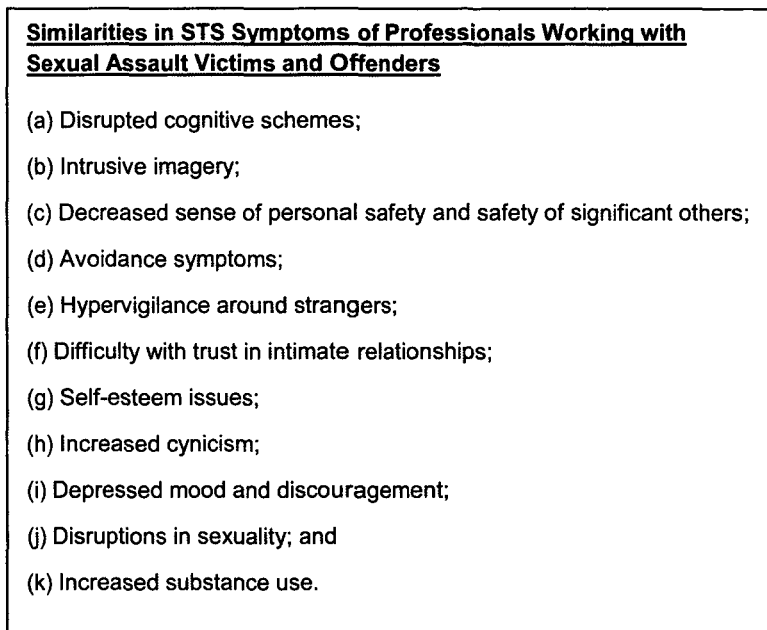


Fig. 7²⁷⁴

As the subpart below confirms, another area of similarity between defense counsel and prosecutors is their reactions to child pornographic media, which equally traumatizes a viewer regardless of the characteristics of the person charged with possessing, trading, or producing it. Certainly, there may be additional STS influences when the depicted child is related to the accused or will be testifying at the criminal proceedings. However, the reactions explored below are those based upon solely viewing the material and reacting to it, without the additional layers of personalization. For this, it matters not whether the attorney is defense or prosecution oriented, only that the attorney is a *human*.

2. Common Consequences Related to Disturbing Media

Although research consistently reveals that police who work with sex crimes experience greater levels of STS than police working with other offenses,²⁷⁵ those officers who review suspected and confirmed images of child pornography are in a special category of risk, even greater than child forensic interviewers.²⁷⁶ While

²⁷⁴ Way et al., *supra* note 273, at 51–52.

²⁷⁵ See, e.g., Follette et al., *supra* note 119, at 276 (observing how “PTSD symptoms were significantly more prevalent among police officers dealing with rape victims”).

²⁷⁶ Perez et al., *supra* note 9, at 120 (observing higher STS rates in media examiners than “forensic interviewers of child abuse victims”).

both learn of horrific acts perpetrated upon children, the media examiners are the only ones who must watch the abuse unfold, whereas “forensic interviewers never actually witness the victimization taking place”²⁷⁷ In this regard, child pornography examiners are “unique” among police in the requirements of their duties to examine such materials.²⁷⁸ Although scholarly studies of the effects of “disturbing media” on this population are “relatively recent,”²⁷⁹ researchers have established some very clear findings that have direct relevance to Judge Advocates on both sides of the spectrum. Notably, the challenges faced by forensic examiners of disturbing media translate directly to Judge Advocates.²⁸⁰ For Trial Defense Counsel and Trial Counsel, military law has firmly established the attorney’s duty to review each and every image of suspected child pornography in order to determine whether the element of lascivious exhibition of the genitals has been met for each charged image—even in guilty pleas.²⁸¹ This point is made most clear in the recent Court of Appeals for the Armed Forces case of *United States v. Barberi*,²⁸² but also in other appellate decisions considering the sufficiency of the evidence for all elements of the offense.²⁸³

Exposure to child pornography has its own consequences, regardless of whether the professional viewing the images is affiliated with the defense or prosecution. Having to observe the sexual molestation of a child occurring in near-

²⁷⁷ *Id.* While the research demonstrates that “verbal exposure” to traumatic material is enough to invoke STS and can easily lead to “intrusive imagery,” it is significantly more traumatizing for any professional to bear witness to victimization as it occurs, in any form, than to hear a retrospective account. Baird & Jenkins, *supra* note 88, at 73.

²⁷⁸ Harms, *supra* note 10, at 10 (observing how disturbing media exposure is “highly unique to law enforcement due to the fact that they are required to view the most ‘heinous images’ of traumatized children in order to do their jobs”).

²⁷⁹ Jessica Martha Morales, M.A. Thesis, *Someone Who Understands: The Effect of Support on Law Enforcement Officers Exposed to Disturbing Media* 11 (July 2012).

²⁸⁰ Melissa Wells et al., *Defining Child Pornography: Law Enforcement Dilemmas in Investigations of Internet Child Pornography Possession*, 8 POLICE PRAC. & RES. 269, 276 (2009) (“Determining whether or not images are explicit or graphic enough to meet the definition of child pornography is a primary dilemma for investigators.”).

²⁸¹ See, e.g., Editorial, *CAAF’s Decision in U.S. v. Barberi*, 60 THE TRIAL ADVOC. 4, 4 (2013): Trial Counsel should already be in the habit of closely scrutinizing child pornography evidence, even at guilty plea . . . [b]ut *Barberi* underscores the importance of revising every single image and video to determine what theory of guilt is viable and appropriate for each one—Are they children? Does it involve sexual intercourse or sodomy? Or, in the alternative, how does each image meet the *Dost* factors? (citing to *United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986)).

²⁸² *United States v. Barberi*, 71 M.J. 127, 130 (C.A.A.F. 2012) (reversing a conviction on the grounds that possession of four images was constitutionally protected since the images of the children did not depict their genitals or pubic areas).

²⁸³ *United States v. Andersen*, 2010 WL 3938363, at *1 (A. Ct. Crim. App., Sept. 10, 2010) (finding that an accused was not provident to his guilty plea for possession of child pornography because he merely possessed suggestive “child erotica,” which “does not violate federal law,” even though it may have certainly fueled the accused’s fantasies about intercourse with children).

real-time instigates compounded trauma in that 1) the viewer is exposed to child trauma, which is the primary candidate for invoking STS;²⁸⁴ and 2) the material is of an extremely graphic nature, often involving sadism, torture, and other heinous acts perpetrated on innocent children—and infants—by adults who know better.²⁸⁵ The requirement to view the images has been recognized by agents as singularly the most difficult aspect of their jobs.²⁸⁶ The nature of this experience is so disarming that one need only experience a single image of disturbing media on a single occasion for a lasting STS reaction.²⁸⁷ Further, regarding the Assistant Trial or Trial Defense Counsel who may only work on a few of these cases during their tenure in military justice, “[a]n individual who works with such material once or twice a year may find the material more shocking and may suffer more psychological distress.”²⁸⁸

In the hierarchy of reactions to disturbing media, the most severe reactions occur in response to “live video with audio,” followed by “recorded video alone,” followed by “recorded audio alone,” followed by “still images.”²⁸⁹ In all respects, the younger the victim depicted in the media, the more severe the effects on the viewer.²⁹⁰ The stigma associated with child pornographic images creates particularly significant consequences on the viewer’s support system, as investigators will often refrain from discussing this work to protect their family members or shield themselves from family ridicule or condemnation.²⁹¹ Some spouses are adamantly opposed to investigators viewing any sort of pornography, let alone the most heinous type involving child sexual exploitation.²⁹² Sexual intimacy clearly suffers for the disturbing media viewer, likely due to intrusive imagery.²⁹³ Further, many of the viewers may begin to doubt the manner in which

²⁸⁴ See, e.g., Figley, *supra* note 42, at 16 (noting the “provocative” nature of children’s trauma and how professionals are most vulnerable to “the pain of children”); Cerney, *supra* note 259, at 131–32 (“For many individuals, the cruelty and sadistic atrocities that are enacted on innocent children . . . are difficult to fathom, much less believe.”).

²⁸⁵ Morales, *supra* note 279, at 6.

²⁸⁶ Perez et al., *supra* note 9, at 120 (noting that nearly half of the digital media evaluators (46%) reported “that actually viewing the images was the most difficult thing about their work, e.g., ‘watching innocent children abused by someone who knows better’”).

²⁸⁷ Harms, *supra* note 10, at 44 (emphasizing the potential long-term impact of a single viewing of disturbing media involving children).

²⁸⁸ Perez et al., *supra* note 9, at 121.

²⁸⁹ Harms, *supra* note 10, at 11.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 10 (noting how many computer forensic examiners report “becoming more withdrawn from their families because they do not want to or cannot discuss their work at home”); see also Salston & Figley, *supra* note 17, at 169 (discussing risks of STS-afflicted professionals traumatizing their families and how “distancing may occur when [professionals] do not believe anyone would be able to understand the distress they are experiencing as a result of such intense and difficult work”).

²⁹² Perez et al., *supra* note 9, at 119.

²⁹³ *Id.* (discussing “loss of sexual desire” related to viewing of child pornography).

they are being transformed by regular exposure to these images. Predictably, overprotectiveness is a staple of such work, including a dimension of fear that the officer may, himself, become excited by or begin to crave exposure to these images.²⁹⁴ Overall, perhaps the greatest strain comes in the area of the officer's relationships with members of immediate social support systems.²⁹⁵

Because of the special factors related to disturbing media, Professor Lisa Perez was the first scholar to develop a scale for assessing stresses unique to forensic examiners. Her scale, which includes some standard measures of STS,²⁹⁶ includes four additional measures. The Supportive Relationships Subscale consists of six items which are designed to "assess[] the extent to which the employees felt that their loved ones were open and understanding about the nature of their work."²⁹⁷ The Protectiveness Subscale contains five questions that probe "whether their work led employees to feel an increased need to shield their loved ones, especially children, from harm."²⁹⁸ The Coworker Relationships Subscale has four questions intended to assess "the nature of employees' relationships with one another."²⁹⁹ And, the Distrust of General Public Subscale evaluates the respondent along the spectrum of six inquires about "whether working in the computer forensics laboratory led employees to feel more negative about people in general."³⁰⁰ Together, these additional measures provide insights into "how exposure to disturbing media affected the relationships and general adaptation" of the investigators.³⁰¹ And, the use of the scale has, so far, revealed that forensic examiners generally suffer from high levels of "exhaustion and cynicism" and that many were at risk for developing Secondary Traumatic Stress Disorder.³⁰² Although methods to mitigate STS are generally universal, regardless of the source of the secondary trauma, this article reproduces the Disturbing Media Reactions Scale in Figure 16, below, to help Judge Advocates gauge their own reactions to cases involving such images so they have better indicators of the symptoms to look for and when to seek targeted interventions.

²⁹⁴ *Id.* at 122.

²⁹⁵ Morales, *supra* note 279, at 8 (noting how many forensic media investigators "reported trying to forget about what they do, wanting to get away from others, and trying to distance themselves").

²⁹⁶ Perez et al., *supra* note 9, at 117 (using the Secondary Traumatic Stress Scale to assess STS rates).

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.* at 118.

3. Differentiated STS-Producing Mechanisms and Consequences

Keeping in mind that there are different mechanisms for attaining STS, although both prosecutors and defense attorneys face many of the same eventual symptoms, it is important to focus on those pathways that originate exclusively from the defense function or exclusively from the prosecution function. While there are likely a number of them, such as the female defense counsel feeling unsafe in the presence of and sexually objectified by her client charged with sexual assault,³⁰³ this section focuses on the two main problematic pathways and related consequences that are solely based upon the attorney's affiliation.

i. Prosecutorial Passion

While passion is often an aid in litigation for both prosecutors and defense attorneys,³⁰⁴ too much of it can have devastating results. Over time, prosecutors involved specifically in sex crimes cases can be engulfed by "prosecutorial passion," which has specific consequences that are unparalleled because of their role in representing the government.³⁰⁵ Prosecutorial passion and anger builds up over the course of cases, and the prosecutor begins to detest the accused in every case so much that, soon, all individuals charged with sex offenses become the "enemy," as eloquently described by former Queens Special Victims Prosecutor Alice Vachss:

As to the rapists who already walk among us, our only recourse is to fight The battlefields are many. The courthouse and the jury room. We need to go to war. The enemy has already opened hostilities. The casualties are already far too high. And our resources are already depleted by friendly fire.³⁰⁶

To this end, the prosecutor draws from the anger at being exposed to victims' severe pain and suffering in order to cope with the challenges of sex crimes prosecutions, best explained here by another civilian Special Victims Prosecutor:

³⁰³ See Lawrence Ellerby, *Impact on Clinicians: Stressors and Providers of Sex-Offender Treatment*, in *IMPACT: WORKING WITH SEXUAL ABUSERS* 51, 56 (Stacey Bird Edmunds ed., 1997) ("[F]emale clinicians were particularly prone to feeling increased vulnerability or threat of abuse and more concerned about personal safety and their children's safety.").

³⁰⁴ See, e.g., Miller et al., *supra* note 31, at 64 (discussing how high emotion can aid in advocacy or decision-making).

³⁰⁵ See Burke, *supra* note 260, at 186, 195 (noting how "prosecutors prioritize cases in part by the amount of passion they feel in each case," how such "passion might trigger or exaggerate cognitive biases," and how such passion "alter[s] the prosecutor's rational cost-benefit analys[es] [and] inject[s] irrationality into the prosecutor's decision making").

³⁰⁶ ALICE VACHSS, *SEX CRIMES: TEN YEARS ON THE FRONT LINES PROSECUTING RAPISTS AND CONFRONTING THEIR COLLABORATORS* 283-84 (1993).

"It takes a certain personality to have longevity as a sex crimes prosecutor. Some of my colleagues say they can do it because they don't get sad when they hear about cases—they get angry primarily."³⁰⁷ This is similar to the way forensic examiners of child pornography envision swift removal of the worst pedophiles from the streets into prisons in order to cope.³⁰⁸ On this view, it is not long before all accused and their counsel are demonized.³⁰⁹

Proceeding from this enraged mentality, it can become quite easy for the prosecutor to consider any and all concerns raised by the defense in sex crimes cases as merely whimpering or "attempts to revictimize the victim,"³¹⁰ to reject any plea offer, no matter how reasonable it might seem,³¹¹ to dismiss exculpatory evidence of which only the prosecution is aware as merely "fabricated or unreliable,"³¹² and to attempt to convict an accused based on a stock narrative, regardless of its accuracy in a given case.³¹³ The prosecutor can become much like the female rape victim advocate who eventually comes to hate men as a result of her anger toward her victims' perpetrators,³¹⁴ or the male therapist who becomes

³⁰⁷ Jeffrey W. Spears, *Prosecution of Sex Crimes: Special Feature, In the Words of a Prosecutor*, in *SEX ASSAULT: THE VICTIMS, THE PERPETRATORS, AND THE CRIMINAL JUSTICE SYSTEM* 365, 381 (Frances P. Reddington & Betsy Wright Kreisel eds., 2d ed. 2009).

³⁰⁸ Harms, *supra* note 10, at 45.

³⁰⁹ See, e.g., VACHSS, *supra* note 306, at 110 ("Basically there are only three defenses to rape: 1. It never happened; 2. She consented; or 3. It wasn't me. Defense attorneys cold-bloodedly select which of these three is more likely to fly in a particular case."); *id.* at 115 (referring to defense counsel as "subhumans" for cross examining a victim); *id.* at 109 ("Lawyers who find common cause with rapists are simply worms. Their clients are snakes. Both crawl on their bellies. But worms are just slimy—snakes can be lethal."); *id.* at 93 ("[T]here are the lawyers who identify with their rapist clients, who seem to enjoy the opportunity to degrade a woman that cross-examination might offer them.").

³¹⁰ See, e.g., Scott A. McDonald, Note, *When a Victim's a Victim: Making Reference to Victims and Sex-Crime Prosecution*, 6 NEV. L. J. 248, 249 (2006) ("[T]he defendant enjoys a presumption of innocence while the victim must struggle to overcome misplaced presumptions of promiscuity and poor judgment.").

³¹¹ See Burke, *supra* note 260, at 194 (discussing how passionate prosecutors often adopt an "I'd rather go to trial and lose" mentality).

³¹² Alafair Burke, *Neutralizing Cognitive Bias: An Invitation to Prosecutors*, 2 N.Y.U. J. L. & LIBERTY 512, 525 (2007); see also STUART TAYLOR JR. & KC JOHNSON, *UNTIL PROVEN INNOCENT: POLITICAL CORRECTNESS AND THE SHAMEFUL INJUSTICES OF THE DUKE LACROSSE RAPE CASE 80* (2007) (describing instances in which the prosecution "skipped over evidence of innocence as though it were inconsequential").

³¹³ See, e.g., WILLIAM A. WAGENAAR ET AL., *ANCHORED NARRATIVES: THE PSYCHOLOGY OF CRIMINAL EVIDENCE* 34, 44 (1993) (observing how prosecutors often attempt to convict on "proof by narrative only," and sometimes, attempt to "edit stories carefully, with the intention of suggesting inferences that cannot be proved by the facts").

³¹⁴ Figley, *supra* note 42, at 1 ("Therapists who work with rape victims . . . often develop a general disgust for rapists that extends to all males.").

overly cautious in dealing with female victims due to similar concerns³¹⁵—too much passion is destructive. For attorneys, such reliance on rage and resentment invites cognitive bias in the form of decisional heuristics³¹⁶ and stereotypes that limit the prosecutor's effectiveness in evaluating the merits of the case, and even in litigating.³¹⁷

Moreover, the problem with unchecked prosecutorial passion as a coping mechanism for STS is the prosecutor's failure to meet his or her responsibility to the system itself: "A primary rationale for requiring a prosecutor at times to act differently than a defense lawyer flows from the fact that a prosecutor represents the government and not an individual client."³¹⁸ The military justice system fails when it is acceptable for the prosecution to be ambivalent toward the innocence of the accused. As demonstrated by a number of exonerations, specifically in sex crimes cases, "[c]ynicism about even the possibility of innocence and carelessness about procedural and substantive safeguards in cases where 'We know he's guilty' are . . . likely to cause wrongful conviction."³¹⁹ When prosecutors are influenced by the special and often disarming human reactions to STS, it is incumbent upon them limit the reach of their own blinding rage because so many of their decisions are not capable of oversight.³²⁰

³¹⁵ Cerney, *supra* note 259, at 135 (describing the male professional who "may feel guilty for being a man . . . [and who] may perceive a need to prove that they are 'good' men, not like the assailant, and [who] may be tempted to offer physical support or become overly protective").

³¹⁶ Michael J. Saks & Robert F. Kidd, *Human Information Processing and Adjudication: Trial by Heuristics*, 15 L. & SOC'Y REV. 123, 127 (1980) (defining heuristics as "simplifying operations . . . to reduce the complexity of information . . . [which] often lead to errors in judgment").

³¹⁷ See Burke, *supra* note 260, at 197 ("[T]he more passion a prosecutor feels for her case, the more likely she will be to overestimate both the likelihood of conviction and the stiffness of the ultimate sentence . . ."). For a detailed discussion of common biases affecting prosecutors, see generally Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM. & MARY L. REV. 1587, 1592–601 (2006) (discussing confirmation bias, selective information processing, and belief perseverance, and explaining how such "cognitive bias may taint the decision making of even ethical prosecutors when executing [their] broad discretion"); see also Saks & Kidd, *supra* note 316, at 132–45 (discussing the availability heuristic, representativeness heuristic, anchoring and adjustment, hindsight bias, and self-serving biases (including over-optimism, overconfidence, and egocentrism). For a corresponding discussion of practical ways in which such biases can play out in sexual assault prosecutions, see generally TAYLOR & JOHNSON, *supra* note 312, at 358–59 (describing a "spectrum of less extreme forms of prosecutorial overzealousness that . . . harm innocent people").

³¹⁸ PETER A. JOY & KEVIN C. McMUNIGAL, *DO NO WRONG: ETHICS FOR PROSECUTORS AND DEFENDERS* 14 (2009).

³¹⁹ Martin, *supra* note 234, at 80. As former prosecutor Seymour Wishman recounted, "I had been so caught up in the contest, the adversarial battle of the trial, that it hadn't occurred to me that I might have been responsible for the conviction of an innocent man On reflection after the verdict [of guilty], it seemed to me that the defendant might have been telling the truth." WISHMAN, *supra* note 196, at 11–12.

³²⁰ Bruce A. Green & Fred C. Zacharias, *Prosecutorial Neutrality*, 2004 WIS. L. REV. 837, 847 (2004) ("[W]hen all is said and done, individual prosecutors' preferences still control a vast range and number of choices, free of outside or supervisory controls.").

ii. Defense Association/Identification with the Accused

Despite a disproportionate focus in the secondary trauma literature on professionals who assist victims, there are a number of points applicable solely to those who work with sexual offenders.³²¹ Similar to the treatment professional or the parole officer, the major pathway to STS for the sexual assault defender is the nature of his or her relationship with the accused and the degree of association with the accused.³²² “Social Taint” theory involves those professionals who do the “dirty work” involving stigmatized individuals.³²³ Attorneys who defend sex offenders top the list for professionals with such tainted recognition.³²⁴ Like others who work with sex offenders, even their family members condemn the attorney and fear that the attorney will inherit the attributes of the cases he or she represents.³²⁵ They may, for example, fear that the attorney will become sexually deviant with increasing exposure to child pornographic material.³²⁶

While one may believe that empathy is ideally suited for prosecutors working with sexual assault survivors, it is the alleged sex offender who demands a far greater quantum of empathy from his defender—and such empathy is not as easy to muster.³²⁷ Even if the attorney does not personally condone the accused’s behavior, the nature of the defense role often requires constant attempts to make the accused appear legitimate or to downplay the impact of his or her offense and its effects.³²⁸ This can be particularly difficult if the accused begins to share demented sexual fantasies or display a sense of enjoyment in the lurid details of the

³²¹ Stacey Bird Edmunds, *The Personal Impact of Working with Sex Offenders in IMPACT: WORKING WITH SEXUAL ABUSERS* 11 (Stacey Bird Edmunds ed., 1997) (“Research that examines the personal impact of providing treatment to victims and perpetrators of sexual abuse disproportionately focuses on the victim-therapist.”).

³²² See *infra* notes 327–40 (discussing influences on attorneys’ relationships with clients).

³²³ Harms, *supra* note 10, at 9.

³²⁴ *Id.*

³²⁵ Bengis, *supra* note 143, at 42 (“I know practitioners who cannot share the realities of work experiences with partners who think they are crazy to work with the sex offender population.”).

³²⁶ See, e.g., Perez et al., *supra* note 9, at 119 (discussing uncomfortable and distancing family dynamics that result from a professional’s exposure to child pornographic images).

³²⁷ As seasoned defense attorney Randy Bellows explains,

To represent a client properly, you have to be able to develop an enormous amount of empathy. You have to be able not only to advocate, but advocate passionately If you care about your client, maybe, just maybe, the judge will care about your client The same is true, only more so, with a jury. If the jury senses that you do not like your client, that you just do not care if he goes down the drain, sure as anything they will flush him.

Bellows, *supra* note 202, at 79.

³²⁸ See, e.g., Ann M. Roan, *Building the Persuasive Case for Innocence*, 35 CHAMPION 18, 24 (2011) (discussing the defense attorney’s responsibility to “normalize the client’s behavior,” above and beyond simply using a negative case analysis that “they just can’t prove it”).

charged offense.³²⁹ In the process of normalizing the accused's behavior, the attorney runs a tremendous risk of identifying with the client or fearing that he or she will. Sex offender treatment professional Steven Bengis describes the phenomenon of having to associate with the offender who, for example, tries to justify sexual abuse of a child as "a 'reasonable response' to the 'sexually provocative' actions of the three-year-old sitting in his lap."³³⁰ To Bengis, he was forced, by his professional duties, to enter a reality that was "flip-flopping in Alice-in-Wonderland style": "Everything sacred was being profaned. Everything beautiful and enriching about childhood and sexuality was becoming ugly and twisted. The unacceptable was commonplace, and the intolerable was almost normal. I felt slightly crazy."³³¹

To avoid entering the client's reality, the defense attorney must often rely heavily on denial. In her primer on representing military members charged with child sex abuse, Air Force Major Beth Townsend recognized that these are some of the most challenging cases specifically because they "test[] the ability of a defense counsel to defend a case in spite of personal feelings regarding the case or the accused."³³² Her recommended solution for this imminent quandary, among highly detailed recommendations for legal strategies, was simply that such counsel "must remain detached from his [or her] own feelings about the case."³³³ The defender, through the process of psychic numbing, may become unable to appreciate the impact of the accused's offense, and may utterly fail to recognize the experience of the victim or others, sometimes impairing the role of advocate. In the words of one veteran public defender: "I try not to think about victims too much. The more I think about them, the more difficult it is to represent my clients."³³⁴ Often, in representing offenders on heinous crimes like sexual assaults, the defense teeters on a line, attempting to strike a balance between two inconsistent choices.³³⁵ He or she may, on the one hand, become one with the client, which risks taking everything so personally that there are no boundaries.³³⁶

³²⁹ See, e.g., Severson & Pettus-Davis, *supra* note 52, at 7–8 (noting how professionals who work with sex offenders "are sometimes bombarded with the images of offenders' descriptions of the abuse they perpetrated and their fantasies involving sexually deviant behavior").

³³⁰ Bengis, *supra* note 143, at 35.

³³¹ *Id.*

³³² Townsend, *supra* note 196, at 261.

³³³ *Id.* at 300.

³³⁴ Bellows, *supra* note 202, at 79.

³³⁵ *Id.* at 93 ("A part of me—the part of me with a mother, wife, and daughter, the part of me with a relative and a friend who have been raped—considered the [government's request for pre-trial preventive detention] eminently reasonable.").

³³⁶ *Id.* at 79 ("[A]gain and again, I found myself becoming almost overwrought at sentencings, pleading . . . for a judge to reach out to my client, pleading for freedom. At a few sentencings I nearly cried and, as I stood there awaiting pronouncement of sentence, I felt transfixed, as if it were my life and liberty hanging in the balance.").

On the other hand, the defense attorney may begin to hate the client, offering less than the attorney's best efforts, and building distance into the relationship.³³⁷

Distance from the offender can manifest in feelings that the client is "grooming" the attorney in the same manner that he or she groomed a victim,³³⁸ or it can result in a state of "subjective role conflict," in which the attorney perceives the defense of the client as directly in conflict with his or her morals.³³⁹ In the latter case, like Captain Pryor, the attorney can easily feel personally responsible for preventing further offenses by the accused on the basis of his or her responsibilities as a defender.³⁴⁰ This responsibility is, of course, different from the trial counsel's responsibility. While the prosecutor inevitably deals with the responsibility of alleviating the pain of the survivor and his or her significant others, the defender may come to a common realization among sex offender treatment professionals: "I try to keep in mind that each client successfully treated may save anywhere from one to several hundred adults and children from being sexually victimized."³⁴¹ However, more sobering for defense counsel is the fact that his or her first priority is obtaining an acquittal before approaching the issue of treatment. One public defender, who had tremendous difficulty representing sex offenders, ultimately had to answer in the affirmative when people would ask, "Don't you take responsibility for what a criminal you get off may do next?"³⁴² In either outcome, whether drawn closer to the client or pushed further from him, it is the nature of counsel's association with the accused and the way he or she approaches that relationship that will invite certain STS responses. The solution of setting professional boundaries and maintaining them is often more difficult to attain in practice when faced with the burdens and stresses of a busy litigation docket.

From research with professionals who work with sex offenders, scholars have identified the following "general themes [that] seem to resonate across the sex-

³³⁷ See *supra* notes 1–14 and accompanying text (describing Captain Pryor's Dilemma).

³³⁸ See, e.g., Severson & Pettus-Davis, *supra* note 52, at 11 (observing how "[m]any [parole] officers described feeling as if the sex offenders were attempting to groom the officers, much as they would a potential victim.").

³³⁹ Lynch, *supra* note 108, at 20 (observing how representation of a client can easily be seen as a violation of the attorney's values, resulting in substantially distancing beliefs like, "I'm thinking what a way to spend my energy, my substance, my life . . . on this deadbeat who's guilty anyway.") (citing a District of Columbia Public Defender).

³⁴⁰ See, e.g., Severson & Pettus-Davis, *supra* note 52, at 11 (noting how parole officers who dealt specifically with sex offenders "also described the burden of feeling a societally imposed . . . responsibility for preventing sex offenders from offending again" and that "the stress of supervising sex offenders is manifested in their own physical and emotional reactions"); Freeman-Longo, *supra* note 119, at 5, 7 ("We often take responsibility for these clients and feel as though we are on some level responsible for that next victim being sexually abused.").

³⁴¹ Freeman-Longo, *supra* note 119, at 6.

³⁴² WISHMAN, *supra* note 196, at 17.

offender-professional spectrum and across gender, ethnic, and sexual preference lines,” which appear below in Figure 8:

Common STS Reactions of any Professional Working with Sex Offenders

- 1) Mistrusting others' sexual behavior, especially people with regular access to children;
- 2) projecting possible abusive motivation onto innocuous interactions and events;
- 3) managing a range of feelings, including sadness for victims; fear, rage and disgust toward clients; and deep distress at the incidence of sexually abusive behavior occurring around us;
- 4) experiencing fleeting feelings of titillation or sexual arousal while listening to descriptions of abuse ranging from minor molestations to heinous sexual crimes; and
- 5) experiencing impulses to act out in sexually deviant ways.

Fig. 8³⁴³

It is in regard to the fourth and fifth dimensions above that defense counsel may experience the greatest conflicts, hence a perception of the need for distance and a basis for STS.

Many defense counsel, like others who work with sexual offenders, will experience unwanted impulses related to the traumatic material.³⁴⁴ This includes “fantasies that parallel the acts described to us by our clients” and “impulses, which, if acted upon, would put us in the same treatment programs that we now administer.”³⁴⁵ Notably, a sexual offender therapist confessed his urge to act this “non-consenting sexual fantasy” that emerged in response to his sex-offender client’s traumatic material:

About a year ago, I worked with a . . . sex offender whose *modus operandi* included sneaking up behind women on the street, grabbing their posteriors, and then running away and hiding. One day, after listening to those stories . . . , I was walking behind an attractive woman and had a very strong impulse to reach out and grab her as the client had described doing.³⁴⁶

³⁴³ Bengis, *supra* note 143, at 32.

³⁴⁴ *Id.* at 31 (“Few practitioners work with sex abusers without becoming aware of the presence of new ideas, feelings, fantasies, impulses and urges directly related to this work.”).

³⁴⁵ *Id.*

³⁴⁶ *Id.* at 39.

The natural response, which emboldens the association with the offender and his deviance is, "What's the matter with me?," despite the fact that the professional would never act on the fleeting impulse and it merely represents an "innocuous moment."³⁴⁷ When they occur, such inevitable subconscious impulses are necessarily addressed in isolation due to the *verboden* nature in any discussion with fellow professionals.³⁴⁸ However, informal studies of several thousand sex offender therapist trainees indicate that between 25% to 80% of them have contended with such challenges.³⁴⁹ This is clearly worse than the child pornography reviewer who fears how he might possibly be affected by the material. When such impulses do arise, they are most often met with immediate repressive action. Professionals who experience feelings of arousal fear that they will be forced to answer the question, "Am I capable of committing the same acts?"; the question, like the impulse itself, becomes too horrifying to acknowledge in any way, creating a hotbed for continued distress when the answer likely would have resolved it.³⁵⁰ Some examples of the deleterious results of this repression include practitioners who "no longer give their small children baths because they once had a moment of sexual arousal while bathing them" and those who "can no longer wrestle with their children without editing the inner voice that says, 'Well, you know this is how abusers gain access to victims. Be careful of your hands. Where is that leg going?'"³⁵¹ Ultimately, professionals who work with sex offenders "need to have the courage to ask and then answer honestly even the disquieting and embarrassing questions."³⁵² There is undoubtedly greater value in having professionals "simply note some of those feelings, catalogue them, and allow them to dissipate," rather than ignoring or repressing them.³⁵³

In either the prosecutorial or defense context, while it may, at times, be impossible to trace a particular unwanted feeling or state of irritation to a specific cause among many candidates in the attorney's experience, knowledge of specific STS-invoking conditions and their related symptoms can aid in quicker detection and mitigation efforts.³⁵⁴ Such awareness can also help attorneys in their planning for the prevention of STS in client or evidence engagement.

³⁴⁷ *Id.* at 40.

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 32.

³⁵⁰ *Id.* at 31, 37.

³⁵¹ *Id.* at 42.

³⁵² *Id.* at 37.

³⁵³ *Id.* at 35 ("At the least, such feelings must be honored and accepted as having a place within our psychic lives.").

³⁵⁴ See, e.g., SAAKVITNE ET AL., *supra* note 8, at 51 ("It is easier to protect yourself from vicarious traumatization if you know your vulnerabilities.").

V. PRACTICAL METHODS TO IDENTIFY AND MITIGATE THE EFFECTS OF STS

For professionals of all disciplines, including lawyers, unattended reactions to trauma can, and do, progress into physical and psychological disorders. Notably, “[i]f the signs of STS are ignored, STSD may develop.”³⁵⁵ Not surprisingly then, the most effective way to combat the effects of secondary trauma exposure is for professionals to know the typical physical, emotional, and psychological reactions previously explored in Parts II, III, and IV.³⁵⁶ Especially in the fast-paced arenas of criminal litigation, the necessary second step involves gauging the intensity of one’s reactions on a periodic basis to understand significant shifts.³⁵⁷ In fact, the more regularly one checks for such changes, the greater the ability to intervene without risks of cognitive impairment.³⁵⁸ While, for example, it is perfectly natural to be shocked, disgusted, or overcome with tears and emotion when confronted by men’s or women’s inhumanity to man, woman, or child, problems, disorders, and impediments to the exercise of logic and rationality occur when these reactions and related impulses fester or resurface uncontrollably.³⁵⁹

Recalling that secondary trauma is a process, rather than a diagnosis, and that it exists across a spectrum of possible reactions, traumatologists and other experts have developed specific self-assessment tools to help professionals approximate and evaluate their own reactions to ST over time. Some of the scales even have numerical cutoffs to determine elevated levels of risk that would best be addressed with the assistance of a mental health professional. According to one comprehensive review, mental health professionals have resorted to the following eleven instruments listed in Figure 9, below, for evaluating STS, as opposed to general stress conditions.

³⁵⁵ Salston & Figley, *supra* note 17, at 169.

³⁵⁶ Figley & Beder, *supra* note 30, at 278, 282 (“The first step in preventing or treating STS/CF is to recognize the signs and symptoms of its emergence.”).

³⁵⁷ See, e.g., Carlos P. Zalaquett & Richard J. Wood, *Introduction* to *EVALUATING STRESS: A BOOK OF RESOURCES*, at vii (Carlos P. Zalaquett & Richard J. Wood eds., 1997) (“Measuring stress is a critical element for designing effective stress-reducing [strategies].”); Dutton & Rubinstein, *supra* note 17, at 82, 98 (“The development of increased personal awareness is essential in order that trauma workers can monitor the impact of their work and respond effectively in a timely manner.”).

³⁵⁸ See, e.g., Figley & Beder, *supra* note 30, at 278, 282 (“As [STS] manifests at a symptoms level, workers need to be *continuously self-monitoring* for the presence of numbing, startle response, intrusive thoughts, nightmares, insomnia and anxiety, and avoidance of situations.”) (emphasis added) (alteration in original); Bride & Figley, *supra* note 27, at 322 (recommending “ongoing monitoring of STS”).

³⁵⁹ Cerney, *supra* note 259, at 131, 132 (explaining that the danger with STS comes when one’s own internal view of the world and cognitive schema transforms in relation to the case material).

Common STS Evaluation Measures in Mental Health Clinicians

1. Traumatic Stress Inventory (TSI-BSL)
2. Traumatic Stress Inventory Life Event Questionnaire (LEQ)
3. Compassion Fatigue Self-Test
4. Maslach Burnout Inventory
5. Secondary Trauma Questionnaire
6. Professional Quality of Life Scale (ProQOL)
7. Self-Report Posttraumatic Stress Disorder Scale (PSS-SR)
8. Impact of Event Scale – IES
9. Trauma Symptom Checklist – 40
10. Symptom Checklist 90 (Revised SCL-90-R)
11. Brief Symptom Inventory

Fig. 9³⁶⁰

Although some of the instruments were designed with a specific profession in mind,³⁶¹ enough tools now exist with generic application to any trauma worker.³⁶² Further, experts have made a solid case for applying certain measures to attorneys. This article overcomes two traditional barriers that have prevented the legal profession from obtaining these measures: (1) lack of a consolidated resource to

³⁶⁰ DONALD MEICHENBAUM, SELF-CARE FOR TRAUMA PSYCHOTHERAPISTS AND CAREGIVERS: INDIVIDUAL, SOCIAL AND ORGANIZATIONAL INTERVENTIONS 8, www.melissainstitute.org/documents/Meichenbaum_SelfCare_11thconf.pdf (last visited April 27, 2014). A number of these scales have been revised from the versions indicated in the Figure. For example, the TSI Belief Scale-Revision L, which originally appeared in a book dealing with counseling incest survivors. See LAURIE ANNE PEARLMAN & KAREN W. SAAKVITNE, TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS 408–10, app. (1995). Since the mid-‘90s, the scale became property of Western Psychological Services, which revised it in 2003 as the *Trauma Assessment Belief Scale* [TABS].

³⁶¹ Professor Charles Figley designed his *Compassion Fatigue Self-Test [CFST]* for *Psychotherapists* in 1995 for use “specifically with mental health workers.” Motta et al., *supra* note 48, at 55. See *infra* Part V.C; see also 1 EVALUATING STRESS: A BOOK OF RESOURCES 245, 245–49 (Carlos P. Zalaquett & Richard J. Wood eds., 1997) (discussing the *Nurse Stress Index*, specific to that profession).

³⁶² For example, as the field of STS studies progressed, Professor Figley revised his Self-Test for use by a broader range of professionals, including attorneys, titled the *Compassion Fatigue Self-Test Revised for Care Providers* [CF-R]. See *Infra* Part V.C (reproducing the test).

locate them;³⁶³ and (2) the problem of copyright protections or caveats on their free use.³⁶⁴

This Part describes and includes nine practical tools that are ready for immediate use by military counsel who must interact with traumatic sexual assault testimony or evidence. Given the uniquely traumatizing nature of child pornographic media, one scale is borrowed, with permission from its creator, Professor Lisa Perez, to help attorneys from either side assess the magnitude of their own responses to these images. Finally, this article offers specific tools for Trial and Trial Defense Counsel. As a measure to assist sex crimes prosecutors specifically, Professor Arie Kruglanski's *Need for Closure Scale* is presented for use in gaining awareness over pressures that might activate cognitive distortions in the exercise of prosecutorial discretion. Alternatively, Trial Defense Counsel who work with the accused in sex crimes cases might benefit from a tool that sex offender therapists use to probe their levels of reactivity, likely raised by associational challenges explored earlier in Part IV.A.3 of this article.

Where required, the author of this article has gone through great lengths to obtain permission from the copyright holders for these various scales to include them for immediate use by military attorneys, eliminating proprietary concerns that usually result in books that merely describe a scale without ever including it, making the process of finding the instrument much like tracing the title of a property. As a special note, attorneys should peruse these instruments and determine which ones are best suited to individual preferences. While some may seem rudimentary in nature, most have withstood validity tests that meet strict scientific standards as indicated in the discussions accompanying each measure.

³⁶³ See, e.g., Carlos P. Zalaquett & Richard J. Wood, *Introduction*, in 2 *EVALUATING STRESS: A BOOK OF RESOURCES* vi (Carlos P. Zalaquett & Richard J. Wood eds., 1998) (observing the "ad hoc" development of instruments for measuring stress and the lack of a "unified source" to locate them); Zalaquett & Wood, *supra* note 357, at vii (recognizing "no single source for finding detailed information about" stress-assessment tools).

³⁶⁴ Between the detailed descriptions of validity tests for a combined 59 stress measuring instruments surveyed in Volumes I and II of *EVALUATING STRESS: A BOOK OF RESOURCES*, only a handful of the actual instruments are included. Most merely refer the reader to contact the developer of each instrument for further information due to copyright protections and fee requirements. As another example, the author's request to reprint the *TSI Belief Scale-Revision L*, which was subsequently revised as the TABS was denied by the representative of its owner, Western Psychological Services. The cited bases for the denial included (1) the fact that with a Juris Doctorate, Masters in Public Policy, and Master of Laws, the author did not "present a degree that would make [him] eligible to directly purchase the TABS . . .," that a copy of the scale would have to be "purchase[d] by a qualified mental health professional," and that, even following purchase, "[Western Psychological Services [WPS]] policy does not allow reprinting of [its] instruments or their scales in their entirety for the requested purpose . . ." E-mail from Susan Weinberg, Rights and Permissions Manager, WPS, to author (June 10, 2013) (on file with author).

A. Secondary Traumatic Stress Scale

This assessment tool was developed by Brian E. Bride in 2004.³⁶⁵ It is “a 17-item instrument . . . designed to measure intrusion, avoidance, and arousal symptoms associated with indirect exposure to traumatic events via one’s professional relationships with traumatized clients.”³⁶⁶ In validation studies, the scale proved accurate for detecting symptoms of STS with “strong reliability, convergent and discriminant validity, and factorial validity for the measure.”³⁶⁷ It has been used to assess STS in the full range of professionals, including, most recently, forensic investigators who examine suspected and confirmed child pornographic images.³⁶⁸

³⁶⁵ Brian E. Bride et al., *Development and Validation of the Secondary Traumatic Stress Scale*, 14 RES. ON SOC. WORK PRAC. 27, 28 (2004) (describing various rounds of testing and the streamlining of numerous measures to refine the present version).

³⁶⁶ Salston & Figley, *supra* note 17, at 171.

³⁶⁷ *Id.*

³⁶⁸ Perez et al., *supra* note 9, at 116.

Secondary Traumatic Stress Scale

The following is a list of statements made by persons who have been impacted by their work with traumatized clients. Read each statement then indicate how frequently the statement was true for you in the past seven (7) days by circling the corresponding number next to the statement.

NOTE: "Client" is used to indicate persons with whom you have been engaged in a helping relationship. You may substitute another noun that better represents your work such as consumer, patient, recipient, etc.

		Never	Rarely	Occasionally	Often	Very Often
1.	I felt emotionally numb	1	2	3	4	5
2.	My heart started pounding when I thought about my work with clients	1	2	3	4	5
3.	It seemed as if I was reliving the trauma(s) experienced by my client(s)	1	2	3	4	5
4.	I had trouble sleeping	1	2	3	4	5
5.	I felt discouraged about the future	1	2	3	4	5
6.	Reminders of my work with clients upset me	1	2	3	4	5
7.	I had little interest in being around others	1	2	3	4	5
8.	I felt jumpy	1	2	3	4	5
9.	I was less active than usual	1	2	3	4	5
10.	I thought about my work with clients when I didn't intend to	1	2	3	4	5
11.	I had trouble concentrating	1	2	3	4	5
12.	I avoided people places or things that reminded me of my work with clients	1	2	3	4	5
13.	I had disturbing dreams about my work with clients	1	2	3	4	5
14.	I wanted to avoid working with some clients	1	2	3	4	5
15.	I was easily annoyed	1	2	3	4	5
16.	I expected something bad to happen	1	2	3	4	5
17.	I noticed gaps in my memory about client sessions	1	2	3	4	5

Intrusion Subscale (add items 2, 3, 6, 10, 13)

Avoidance Subscale (add items 1, 5, 7, 9, 12, 14, 17)

Arousal Subscale (add items 4, 8, 11, 15, 16)

TOTAL (add Intrusion, Arousal, and Avoidance Scores)

Intrusion Score _____

Avoidance Score _____

Arousal Score _____

Total Score _____

Fig. 10

Secondary Traumatic Stress Scale³⁶⁹

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³⁶⁹ Bride et al., *supra* note 365, at 33, app. (recreated by the Ohio State Journal of Criminal Law staff).

B. *Secondary Trauma Scale*

This assessment tool was developed as the *Secondary Trauma Questionnaire* in 1999,³⁷⁰ and refined by Robert W. Motta in 2001.³⁷¹ According to the developer of the scale, it “is a reliable and valid paper-and-pencil measure that is easily administered, has established cutoff scores, and can be used for various types of secondary traumatic experiences.”³⁷² This may explain why it has been used to assess STS in the full range of professionals, including, most recently, asylum attorneys who regularly represent refugees in the U.S. immigration courts.³⁷³ Of importance to attorneys who wish to use the scale, Professor Motta and his peers established cutoff scores to help identify intervention and treatment needs. Namely, “scores of 38 or higher appear to be indicative of mild to severe anxiety and depression and also are related to problematic intrusion and avoidance symptoms.”³⁷⁴ Moreover, “[s]cores of 45 or higher . . . should, at the very least, alert the [professional] to the possibility of significant emotional concerns, as they were associated with moderate to severe anxiety and depression.”³⁷⁵

³⁷⁰ Robert W. Motta et al., *Initial Evaluation of the Secondary Trauma Questionnaire*, 85 PSYCHOL. REP. 997 (1999).

³⁷¹ Robert W. Motta et al., *Discriminant Validation of the Modified Secondary Trauma Questionnaire*, 2 J. OF PSYCHOTHERAPY IN INDEP. PRAC. 17, 20 (2001).

³⁷² Motta et al., *supra* note 48, at 55.

³⁷³ See generally Piwowarczyk et al., *supra* note 99, at 263.

³⁷⁴ Motta et al., *supra* note 48, at 57.

³⁷⁵ *Id.*

Secondary Trauma Scale

Consider a negative experience or experiences that happened to someone close to you. The person could be a family member, close friend, or anyone else with whom you have had a close relationship.

What relationship was that person to you? _____

What was the negative experience? _____

If you can think of anyone close to you who had a highly negative experience, please put a check here: _____

For the items below, write in the number that best describes how you think and feel about the events above. Complete the items even if you could not think of a close relationship that had a negative experience. If you were unable to identify someone above, you may use your own experience (Describe) _____

1 = rarely/never; 2 = at times; 3 = not sure; 4 = often; 5 = very often
(Put number in spaces below).

1.	I force myself to avoid certain thoughts or feelings that remind me of (person above's) difficulties.
2.	I find myself avoiding certain activities or situations because they remind me of their problems.
3.	I have difficult falling or staying asleep.
4.	I startle easily.
5.	I have flashbacks (vivid unwanted images or memories) related to their problems.
6.	I am frightened by things that he or she said or did to me.
7.	I experience troubling dreams similar to their problems.
8.	I experience intrusive, unwanted thought of their experiences.
9.	I am losing sleep over thoughts of their experiences.
10.	I have thought that I might have been negatively affected by their experience.
11.	I have felt "on edge" and distressed and this may be related to thoughts about their problem.
12.	I have wished that I could avoid dealing with the person or persons named above.
13.	I have difficulty recalling specific aspects and details of their difficulties.
14.	I find myself losing interest in activities that used to bring me pleasure.
15.	I find it increasingly difficult to have warm and positive feelings for others.
16.	I find that I am less clear and optimistic about my future life than I once was.
17.	I have has some difficulty concentrating.
18.	I would feel threatened and vulnerable if I went through what the person above sent through.

Fig. 11
Secondary Trauma Scale³⁷⁶
 © 2001 R. Motta. Reprinted with Permission.

³⁷⁶ *Id.* at 55, app. (recreated by the Ohio State Journal of Criminal Law staff).

C. Compassion Fatigue Self Test-Revised for Care Providers (CF-R)

This assessment tool was developed by Professor Charles R. Figley in 2002.³⁷⁷ The current tool has undergone substantial revision to apply it to a broader range of professionals than psychotherapists, as indicated in Professor Figley's inclusion of all "care providers."³⁷⁸ In their publication on specialized interventions to address vicarious trauma among the judiciary, researchers have proposed this test as "valuable" not only because it is capable of evaluating STS specifically, but further because it is capable of ascertaining the impact of regular exposure to "graphic trial evidence," specifically.³⁷⁹

³⁷⁷ Gentry et al., *supra* note 58, at 123, 134, app. 6.1.

³⁷⁸ Compare Figley, *supra* note 42, at 1, 13–14 (limiting the test to "psychotherapists"), with Fig. 12, above.

³⁷⁹ Jared Chamberlain & Monica K. Miller, *Stress in the Courtroom: Call for Research*, 15 PSYCHIATRY, PSYCHOL. & L. 237, 244, 247 (2008).

Consider each of the following items about you and your work/life situation. Write in the number that best reflects your experience using the following rating system where 1 signifies rarely or never and 10 means very often.

Answer all items, even if they do not seem applicable. Then read the instructions to get your score.

1 = Rarely/Never (N/A) — 2 — 3 — 4 — 5 — 6 — 7 — 8 — 9 — 10 = Very Often
Sometimes

1.	I force myself to avoid certain thoughts or feelings that remind me of a frightening experience.
2.	I find myself avoiding certain activities or situations because they remind me of a frightening experience.
3.	I have gaps in my memory about frightening events.
4.	I feel isolated from others.
5.	I have difficulty falling or staying asleep.
6.	I have outbursts of anger or irritability with little provocation.
7.	I startle easily.
8.	While caring for a victim I thought about violence against the perpetrator.
9.	I have had flash backs connected to my clients.
10.	I have had first-hand experience with traumatic events in my adulthood.
11.	I have had first-hand experience with traumatic events in my childhood.
12.	I have thought that I need to "work through" a traumatic experience in my life.
13.	I am frightened of things a client has said or done to me.
14.	I experience troubling dreams similar to those of a client of mine.
15.	I have experienced intrusive thoughts after working with especially difficult clients/patients.
16.	I have suddenly and involuntarily recalled a frightening experience while working with a client/patient.
17.	I am losing sleep over a client's traumatic experiences.
18.	I have thought that I might have been "infected" by the traumatic stress of my clients/patients.
19.	I remind myself to be less concerned about the well-being of my clients/patients.
20.	I have felt trapped by my work.
21.	I have felt a sense of hopelessness associated with working with clients/patients
22.	I have been in danger working with clients/patients.

	23.	I have thought that there is no one to talk with about highly stressful work experiences.
	24.	I have felt "on edge" about various things and I attribute this to working with certain clients/patients.
	25.	I have frequently felt weak, tired, or rundown as a result of my work as a caregiver.
	26.	I have felt depressed as a result of my work.
	27.	I feel I am unsuccessful at separating work from personal life.
	28.	I have a sense of worthlessness/disillusionment/resentment associated with my work.
	29.	I feel that I am a "failure" in my work.
	30.	I have thoughts that I am not succeeding at achieving my life goals.

Scoring Instructions:

(i) Be certain you responded to all items. (ii) Add the numbers you wrote next to the items. (iii) Note your risk of *Compassion Fatigue*: 94 or less = Low risk; 95 to 128 = Some risk; 129 to 172 = Moderate risk; 173 or more = High risk.

*Note. Items 1 through 22 are reflective of post-traumatic and/or secondary traumatic stress. Items 23 to 30 reflect the issue of burnout. The complete scale represents *Compassion Fatigue*.

Fig. 12

Compassion Fatigue Self Test—Revised for Care Providers (CF-R)³⁸⁰

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D. *Compassion Satisfaction and Fatigue [CSF] Test*

The *Compassion Satisfaction and Fatigue Test* represents Professor Beth Hudnall Stamm's efforts to incorporate the protective factor of compassion satisfaction during the standard assessment for compassion fatigue, such as that which Professor Figley's self-test might measure. To Professor Stamm, it is essential to capture the element of compassion satisfaction, or "satisfaction derived from the work of helping others," in order to identify strengths that may prevent the professional from suffering the full range of STS symptoms.³⁸¹ Her article in the volume *Treating Compassion Fatigue* offers illumination of this point and distinguishes how the test improves upon Professor Figley's original design.³⁸² It is noteworthy that Professor Stamm further incorporated such measures in her later development of the *Professional Quality of Life Scale*, presented and discussed in the appendix of this Article.

³⁸⁰ Gentry et al., *supra* note 58, at 134–35, app. 6.1 (recreated by the *Ohio State Journal of Criminal Law* staff).

³⁸¹ Stamm, *supra* note 86, at 107.

³⁸² *Id.* at 111 (explaining how, with Professor Figley's encouragement, she "developed a series of positive questions parallel to the negative aspects of caregiving" that are normally queried in the assessment instruments).

Helping others puts you in direct contact with other people's lives. As you probably have experienced, your compassion for those you help has both positive and negative aspects. This self-test helps you estimate your compassion stats: How much at risk you are of burnout and compassion fatigue and also the degree of satisfaction with your helping others. Consider each of the following characteristics about you and your current situation. Write in the number that honestly reflects how frequently you experienced these characteristics in the last week. Then follow the scoring directions at the end of the self-test.

0 = Never

1 = Rarely

2 = A few times

3 = Somewhat often

4 = Often

5 = Very often

Items About You

1.	I am happy.
2.	I find my life satisfying.
3.	I have beliefs that sustain me.
4.	I feel estranged from others.
5.	I find that I learn new things from those I care for.
6.	I force myself to avoid certain thoughts or feelings that remind me of a frightening experience.
7.	I find myself avoiding certain activities or situations because they remind me of a frightening experience.
8.	I have gaps in my memory about frightening events.
9.	I feel connected to others.
10.	I feel calm.
11.	I believe I have a good balance between my work and my free time.
12.	I have difficulty falling or staying asleep.
13.	I have outbursts of anger or irritability with little provocation.
14.	I am the person I always wanted to be.
15.	I startle easily.
16.	While working with a victim, I thought about violence against the perpetrator.
17.	I am a sensitive person.
18.	I have flashbacks connected to those I help.
19.	I have good peer support when I need to work through a highly stressful experience.
20.	I have had first-hand experience with traumatic events in my adult life.
21.	I have had first-hand experience with traumatic events in my childhood.
22.	I think I need to "work through" a traumatic experience in my life.
23.	I think I need more close friends.
24.	I think there is no one to talk with about highly stressful experiences.
25.	I have concluded that I work too hard for my own good.
26.	Working with those I help brings me a great deal of satisfaction.
27.	I feel invigorated after working with those I help.
28.	I am frightened of things a person I helped has said or done to me.
29.	I experience troubling dreams similar to those I help.
30.	I have happy thoughts about those I help and how I could help them.

31.	I have experienced intrusive thoughts of times with especially difficult people I have helped.
32.	I have suddenly and involuntarily recalled a frightening experience while working with a person I helped.
33.	I am preoccupied with more than one person I help.
34.	I am losing sleep over a person I help's traumatic experiences.
35.	I have joyful feelings about how I can help the victims with whom I work.
36.	I think I might have been "infected" by the traumatic stress of those I help.
37.	I think I might be positively "inoculated" by the traumatic stress of those I help.
38.	I remind myself to be less concerned about the well-being of those I help.
39.	I have felt trapped by my work as a helper.
40.	I have a sense of hopelessness associated with working with those I help.
41.	I have felt "on edge" about various things, and I attribute this to working with certain people I help.
42.	I wish I could avoid working with some people I help.
43.	Some people I help are particularly enjoyable to work with.
44.	I have been in danger working with people I help.
45.	I feel that some people I help dislike me personally.

Items about Being a Helper and Your Helping Environment

46.	I like my work as a helper.
47.	I feel I have the tools and resources I need to do my work as a helper.
48.	I have felt weak, tired, and run down as a result of my work as a helper.
49.	I have felt depressed as a result of my work as a helper.
50.	I have thoughts that I am a "success" as a helper.
51.	I am unsuccessful at separating helping from my personal life.
52.	I enjoy my coworkers.
53.	I depend on my coworkers to help me when I need it.
54.	My coworkers can depend on me for help when they need it.
55.	I trust my coworkers.
56.	I feel little compassion toward most of my coworkers.
57.	I am pleased with how I am able to keep up with helping technology.
58.	I feel I am working more for the money or prestige than for personal fulfillment.
59.	Although I have to do paperwork that I don't like, I still have time to work with those I help.
60.	I find it difficult separating my personal life from my helper life.
61.	I am pleased with how I am able to keep up with helping techniques and protocols.
62.	I have a sense of worthlessness/disillusionment/resentment associated with my role as a helper.
63.	I have thoughts that I am a "failure" as a helper.
64.	I have thoughts that I am not succeeding at achieving my life goals.
65.	I have to deal with bureaucratic, unimportant tasks in my work as a helper.
66.	I plan to be a helper for a long time.

Scoring Instructions

Please note that research is ongoing on this scale, and the following scores are theoretically derived and should be used only as a guide, not as confirmatory information.

1. Be certain you respond to all items.
2. Mark the items for scoring:
 - a. Put an x by the following 26 items: 1–3, 5, 9–11, 14, 19, 26–27, 30, 35, 37, 43, 46–47, 50, 52–55, 57, 59, 61, and 66.
 - b. Put a check by the following 23 items: 4, 6–8, 12, 13, 15, 16, 18, 20–22, 28, 29, 31–34, 36, 38–40, and 44.
 - c. Circle the following 23 items: 4, 6–8, 12, 13, 15, 16, 18, 20–22, 28, 29, 31–34, 36, 38–40, and 44.
3. Add the numbers you wrote next to the items from each set of items and note:
 - a. *Your potential for compassion satisfaction (X)*: 118 and above = extremely high potential; 100–117 = high potential; 82–99 = good potential; 64–81 = modest potential; below 63 = low potential.
 - b. *Your risk for burnout (check)*: 36 or less = extremely low risk; 37–50 = moderate risk; 51–75 = high risk; 76–85 = extremely high risk.
 - c. *Your risk for compassion fatigue (circle)*: 26 or less = extremely low risk; 27–30 = low risk; 31–35 = moderate risk; 36–40 = high risk; 41 or more = extremely high risk.

Fig. 13

Compassion Satisfaction and Fatigue (CSF) Test³⁸³

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E. The Impact of Event Scale—Revised

This assessment tool was first developed by Daniel S. Weiss in the 1990s.³⁸⁴ It is a measure recognized for its ability to evaluate “intrusive imagery,” which is one of the main symptoms of STS related to sexual assault cases.³⁸⁵ Although it is not designed specifically to assess STS, it helps professionals better appreciate their experience of STS. In their trainings to make professionals aware of STS, clinicians Laurie Anne Pearlman and Karen W. Saakvitne, who specialize in counseling incest survivors, recommend the IES as a necessary component in self-evaluation for STS, along with the *Life Orientation Inventory*, the *TSI Belief Scale*, and the *TSI Life Event Questionnaire*.³⁸⁶

³⁸³ *Id.* at 115–17 (recreated by the *Ohio State Journal of Criminal Law* staff).

³⁸⁴ Daniel S. Weiss, *Psychometric Review of the Impact of Event Scale—Revised*, in MEASUREMENT OF STRESS, TRAUMA, AND ADAPTATION 186, 186–88 (B. Hudnall Stamm ed., 1996).

³⁸⁵ Pearlman & Saakvitne, *supra* note 30, at 165.

³⁸⁶ *Id.*

IMPACT OF EVENT SCALE- REVISED

INSTRUCTIONS: Below is a list of difficulties people sometimes have after stressful life events. Please read each item, and then indicate how distressing each difficulty has been for you **DURING THE PAST SEVEN DAYS** with respect to _____, which occurred on _____ How much were you distressed or bothered by these difficulties?

Not at all = 0	A little bit = 1	Moderately = 2	Quite a bit = 3	Extremely = 4
----------------	------------------	----------------	-----------------	---------------

1. Any reminder brought back feelings about it.
2. I had trouble staying asleep.
3. Other things kept making me think about it.
4. I felt irritable and angry.
5. I avoided letting myself get upset when I thought about it or was reminded of it.
6. I thought about it when I didn't mean to.
7. I felt as if it hadn't happened or wasn't real.
8. I stayed away from reminders of it.
9. Pictures about it popped into my mind.
10. I was jumpy and easily startled.
11. I tried not to think about it.
12. I was aware that I still had a lot of feelings about it, but I didn't deal with them.
13. My feelings about it were kind of numb.
14. I found myself acting or feeling like I was back at that time.
15. I had trouble falling asleep.
16. I had waves of strong feelings about it.
17. I tried to remove it from my memory.
18. I had trouble concentrating.
19. Reminders of it caused me to have physical reactions, such as sweating, trouble breathing, nausea, or a pounding heart.
20. I had dreams about it.
21. I felt watchful and on-guard.
22. I tried not to talk about it.

The **Intrusion** subscale is the **MEAN** item response of items **1, 2, 3, 6, 9, 14, 16, 20**. Thus, scores can range from 0 through 4.

The **Avoidance** subscale is the **MEAN** item response of items 5, 7, 8, 11, 12, 13, 17, 22. Thus, scores can range from 0 through 4.

The **Hyperarousal** subscale is the **MEAN** item response of items **4, 10, 15, 18, 19, 21**. Thus, scores can range from 0 through 4.

Citations: Weiss, D.S. & Marmar, C.R. (1997). The Impact of Event Scale-Revised. In J.P. Wilson, & T. M. Keane (Eds.), *Assessing Psychological Trauma and PTSD: A Practitioner's Handbook*. (pp. 399-411). New York: Guilford.
Weiss, D. S. (2004). The Impact of Event Scale-Revised. In J. P. Wilson, & T. M. Keane (Eds.), *Assessing psychological trauma and PTSD: A practitioner's handbook* (2nd ed., pp. 168-189). New York: Guilford Press.

Fig. 14

Impact of Event Scale-Revised³⁸⁷

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³⁸⁷ Impact of Event Scale—Revised (n.d.) (on file with author) [*Ed. Note:* the response items associated with the Intrusion subscale are 1, 2, 3, 6, 9, 14, 16, 20; associated with the Avoidance subscale are 5, 7, 8, 11, 12, 13, 17, 22; associated with the Hyperarousal subscale are 4, 10, 15, 18, 19, 21]; *see also* Weiss, *supra* note 384, at 186, 188 (reproducing the instrument). The scale also appears in *ASSESSING PSYCHOLOGICAL TRAUMA AND PTSD* 168, 186–87, app. 7.1. (John Preston Wilson & Terence Martin Keane eds., 2d ed. 2004).

F. Life Orientation Inventory

This assessment tool was developed by Debra Newman and Laurie Pearlman in conjunction with the Traumatic Stress Institute in 1995.³⁸⁸ It has been called a "spiritual damage" assessment.³⁸⁹ Although it is not specifically designed for evaluating STS, it tests for changes in spiritual beliefs, which is a strong indicator regarding the impact of traumatic exposure on the professional.³⁹⁰ In their trainings to make professionals aware of STS, clinicians Laurie Anne Pearlman and Karen W. Saakvitne, who specialize in counseling incest survivors, recommend the LOI as a necessary component in self-evaluation for STS, along with the *TSI Belief Scale*, the *TSI Life Event Questionnaire*, and the *Impact of Event Scale*.³⁹¹

LIFE ORIENTATION INVENTORY Revision B ©

This questionnaire is used to learn how individuals view themselves in relation to various aspects of life. Each person has unique views and there are no right or wrong answers. Please place next to each item the number from the scale below which you feel indicates to what extent the item is true for you.

1	2	3	4	5	6
Not at all true	Somewhat true	Moderately true	Quite true	Very true	Extremely true
	1.	I celebrate my bond to the entire creation.			
	2.	I have hope for the future.			
	3.	I believe in the supernatural.			
	4.	Experiences make a big impression on me.			
	5.	I fit in with the universe.			
	6.	I block some experiences from my awareness.			
	7.	There is something beyond the worldly.			
	8.	All living things are interconnected.			
	9.	I notice and attend to what's going on inside me.			
	10.	All living things are interconnected.			
	11.	I am connected with all others.			
	12.	I'm hopeful that things can change.			
	13.	I have had experiences which go beyond physical reality and rational thought.			
	14.	I am a very perceptive person.			
	15.	There is life after death.			
	16.	I am part of an interactive cosmos.			
	17.	Life can be understood.			
	18.	My life has meaning.			
	19.	I expect the best.			

³⁸⁸ SAAKVITNE ET AL., *supra* note 8, at 60.

³⁸⁹ Pearlman & Saakvitne, *supra* note 30, at 165.

³⁹⁰ *Id.*

³⁹¹ *Id.*

1 Not at all true	2 Somewhat true	3 Moderately true	4 Quite true	5 Very true	6 Extremely true
	20.	I am affected by all my experiences.			
	21.	I believe in the unity of all living things.			
	22.	Something positive will happen.			
	23.	We are part of a larger whole.			
	24.	I belong in the natural world.			
	25.	Knowing too much about life is a burden.			
	26.	I believe in the paranormal.			
	27.	There is an unseen dimension of being beyond rational explanation.			
	28.	I identify with all of humanity.			
	29.	Existence is patterned in a way that can be understood.			
	30.	People can connect with something that is beyond mind and matter.			
	31.	I attempt to be aware in all the different circumstances of life.			
	32.	All beings are related.			
	33.	I'm not open to new experience.			
	34.	I believe in "a better tomorrow."			
	35.	There are experiences that cannot be grasped by the mind or physically sensed.			
	36.	I am responsive to my experiences.			
	37.	I believe in a divine being such as God or a higher power.			
	38.	Things that seem senseless at first can be understood, if we make an effort to understand them.			
	39.	Reality is limited to what I can see and feel.			
	40.	I like to be in control of what I experience.			

Fig. 15

TSI Life Orientation Inventory³⁹²

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G. Disturbing Media Reactions Scale

This assessment tool was developed by Professor Lisa Perez in 2010.³⁹³ It is the first assessment tool devoted specifically to professionals who must review suspected and confirmed child pornography as part of their duties, and it is explained in detail in Part IV.A.2, above.

³⁹² PEARLMAN & SAAKVITNE, *supra* note 360, at 410–11, app. (recreated by the *Ohio State Journal of Criminal Law* staff).

³⁹³ Perez et al., *supra* note 9, at 117–18.

Table 1 Reactions to disturbing media subscales and items*Supportive Relationships*

My friends and family object to the work that I do. (R)
 I talk to my spouse/significant other about my feelings about work.
 My friends and family don't want me to talk about what I do. (R)
 As a result of my work, I am more appreciative of my relationships.
 I talk to my friends (non-work friends) about my feelings about work.
 I feel comfortable being intimate with my spouse/significant other.

Protectiveness

Since working here, I have become more protective of my spouse/significant other than I used to be.
 Since working here, I become nervous when my child is around other adults.
 I am concerned about the type of material that my children are exposed to through the media (movies, TV, music, Internet) since I started working here.
 I am more protective of my children than before I started working here.
 Since working here, I have become less comfortable with my children using the Internet.

Co-worker Relationships

I worry about how this work is affecting some of my co-workers.
 Only my co-workers really understand what I go through on a daily basis.
 I have a special bond with my co-workers because of the work that we do.
 I talk to my co-workers about my feelings about work.

Distrust of General Public

I have become a more negative person since starting this job.
 As a result of my work, I have a difficult time trusting people enough to make new friends.
 I assume the worst about people I meet.
 As a result of my work, I have a difficult time forming new romantic relationships.
 I have difficulty trusting other people's motives.
 My work has made me more cynical.

Fig. 16Disturbing Media Reactions Scale³⁹⁴

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H. Need for Cognitive Closure Scale

The *Need for Cognitive Closure Scale* first appeared in a 1993 article by Professor Arie W. Kruglanski and his colleagues.³⁹⁵ Its purpose was to “assess stable individual differences in the need for (or to avoid) cognitive closure,” based on the theory that in those with such a need, there would be a “desire for a definite answer to some topic, *any* answer as opposed to confusion and ambiguity,” which could clearly limit the ability to reach a reasoned decision.³⁹⁶ A component of the *Scale* also tested for “close-mindedness that the desire for secure closure may induce, that is, an unwillingness to have one’s knowledge confronted (hence,

³⁹⁴ *Id.* at 118, tbl.1 (recreated by the *Ohio State Journal of Criminal Law* staff).

³⁹⁵ Arie W. Kruglanski et al., *Motivated Resistance and Openness to Persuasion in the Presences or Absence of Prior Information*, 65 J. PERSONALITY & SOC. PSYCHOL. 861, 876 app. (1993).

³⁹⁶ *Id.* at 861–62 (citation omitted).

rendered insecure) by alternative opinions or inconsistent evidence.”³⁹⁷ In a later study, Professors Kruglanski and Donna M. Webster explored the scale as applied to different populations and concluded that *certainty-oriented* “individuals strive to have cognitive closure . . . through a *closed-minded* attitude toward new information.”³⁹⁸ Given the tremendous pressures on JAG officers to prosecute and convict sex offenders, it is vital that they have a means to test the strength of their need for cognitive closure. As discussed above, high scores may mean that the prosecutor is more susceptible to both STS and various cognitive biases.

³⁹⁷ Donna M. Webster & Arie W. Kruglanski, *Individual Differences in Need for Cognitive Closure*, 67 J. PERSONALITY & SOC. PSYCHOL. 1049, 1050 (1994).

³⁹⁸ *Id.* at 1056.

"Attitude, Belief and Experience Survey"

INSTRUCTIONS: Read each of the following statements and decide how much you agree with each according to your beliefs and experiences. Please respond according to the following scale.

- 1.....strongly disagree
- 2....moderately disagree
- 3.....slightly disagree
- 4.....slightly agree
- 5.....moderately agree
- 6.....strongly agree

- 1. I think that having clear rules and order at work is essential for success.
- 2. Even after I've made up my mind about something, I am always eager to consider a different opinion.
- 3. I don't like situations that are uncertain
- 4. I dislike questions which could be answered in many different ways.
- 5. I like to have friends who are unpredictable.
- 6. I find that a well ordered life with regular hours suits my temperament.
- 7. I enjoy the uncertainty of going into a new situation without knowing what might happen.
- 8. When dining out, I like to go to places where I have been before so that I know what to expect.
- 9. I feel uncomfortable when I don't understand the reason why an event occurred in my life.
- 10. I feel irritated when one person disagrees with what everyone else in a group believes.
- 11. I hate to change my plans at the last minute.
- 12. I would describe myself as indecisive.
- 13. When I go shopping, I have difficulty deciding exactly what it is I want.
- 14. When faced with a problem I usually see the one best solution very quickly
- 15. When I am confused about an important issue, I feel very upset.
- 16. I tend to put off making important decisions until the last possible moment.
- 17. I usually make important decisions quickly and confidently.
- 18. I have never been late for an appointment or work.
- 19. I think it is fun to change my plans at the last moment.
- 20. My personal space is usually messy and disorganized.
- 21. In most social conflicts, I can easily see which side is right and which is wrong.
- 22. I have never known someone I did not like.
- 23. I tend to struggle with most decisions.

24. I believe orderliness and organization are among the most important characteristics of a good student.
25. When considering most conflict situations, I can usually see how both sides could be right.
26. I don't like to be with people who are capable of unexpected actions.
27. I prefer to socialize with familiar friends because I know what to expect from them.
28. I think that I would learn best in a class that lacks clearly stated objectives and requirements.
29. When thinking about a problem, I consider as many different opinions on the issue as possible.
30. I don't like to go into a situation without knowing what I can expect from it.
31. I like to know what people are thinking all the time.
32. I dislike it when a person's statement could mean many different things.
33. It's annoying to listen to someone who cannot seem to make up his or her mind.
34. I find that establishing a consistent routine enables me to enjoy life more.
35. I enjoy having a clear and structured mode of life.
36. I prefer interacting with people whose opinions are very different from my own.
37. I like to have a plan for everything and a place for everything.
38. I feel uncomfortable when someone's meaning or intention is unclear to me.
39. I believe that one should never engage in leisure activities.
40. When trying to solve a problem I often see so many possible options that it's confusing.
41. I always see many possible solutions to problems I face.
42. I'd rather know bad news than stay in a state of uncertainty.
43. I feel that there is no such thing as an honest mistake.
44. I do not usually consult many different options before forming my own view.
45. I dislike unpredictable situations.
46. I have never hurt another person's feelings.
47. I dislike the routine aspects of my work (studies).

Scoring the Need for Closure Scale

1. Reverse-score items 2, 5, 7, 12, 13, 16, 19, 20, 23, 25, 28, 29, 36, 40, 41, and 47.
2. Sum items 18, 22, 39, 43, and 46 to form a lie score.
3. Remove the subject if the lie score is greater than 15.
4. Sum all items except for the above listed lie items to calculate the need for closure score.
5. Use the top and bottom quartiles to determine high and low need for closure subjects.
6. If factors are required, use the following scoring system:
 - Order: 1, 6, 11, 20, 24, 28, 34, 35, 37, 47
 - Predictability: 5, 7, 8, 19, 26, 27, 30, 45
 - Decisiveness: 12, 13, 14, 16, 17, 23, 40
 - Ambiguity: 3, 9, 15, 21, 31, 32, 33, 38, 42
 - Closed Mindedness: 2, 4, 10, 25, 29, 36, 41, 44

Fig. 17

Need for Cognitive Closure Scale³⁹⁹

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I. Targeted Questions for Counsel who Work with Sex Offenders

Although not as complex or detailed as the *Need for Cognitive Closure Scale* for prosecutors, the following list of inquiries in Figure 18, below, has been recognized as an aid to help professionals who work with sex offenders to explore their reactivity to traumatic case material.

³⁹⁹ The current material appears at Professor Kruglanski's website. Arie Kruglanski, *The Need for Closure Scale*, [www.umd.edu, http://terpconnect.umd.edu/~hannahk/NFC_Scale.html](http://www.umd.edu/~terpconnect.umd.edu/~hannahk/NFC_Scale.html) (last visited June 30, 2013). For an earlier edition of the scale in print, see Kruglanski et al., *supra* note 395, at 867, app.

Questionnaire

Instructions: Please answer the following items with a yes or no.

1. ___ Since I started working in the sex abuse/abuser field there have been certain images (i.e., pictures in my mind) that were never there before I began this work.
2. ___ There have been times when I have been bothered by the presence of these images, but I consider them part of the job and ignore them most of the time.
3. ___ There have been many strong feelings that I have had to deal with as a result of working in the abuse/abuser field.
4. ___ I am generally able to talk about these feelings.
5. ___ There are new fantasies that I have had as a result of being in this field.
6. ___ Some of these fantasies involve sexually deviant acts.
7. ___ Some of these fantasies I have had for the first time as a result of doing this work.
8. ___ There have been times when I was troubled by the presence of these fantasies and wondered if there was something wrong with me.
9. ___ Being in this field has changed the way I think about and relate to children (i.e. my own child(ren), other children with whom I have a close relationship). This change could be in the way I touch, an increase in fear or paranoia about safety issues, concerns about my own potential for deviant behavior with children, concerns about new sexual fantasies I have about children, etc.
10. ___ In the past six months, I have discussed the issues which the above questions address with a supervisor.

Fig. 18⁴⁰⁰

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VI. CONCLUSION: BEYOND ASSESSMENT

The emphasis on developing a cadre of specially trained and experienced prosecutors and defense counsel within the Armed Services is evident in the establishment of military justice career tracks, litigation skill identifiers, and Special Victim billets. As commanders increasingly pursue sex offender accountability through the courts-martial system, these military litigators will be exposed to substantially greater amounts of traumatic material, raising legitimate concerns over the effects of STS on them, which may operate differently from junior attorneys' exposure to the same material. Although experience and training

⁴⁰⁰ Bengis, *supra* note 143, at 45 app. A.

may influence symptomatology, both types of attorneys should have access to the full range of analytical and mitigation tools.

Sometimes, simply accepting the risks inherent in working with the traumatized and periodically checking oneself may be all it takes to successfully mitigate STS symptoms and prevent STSD. Regardless of the specific measure employed by the attorney, "our strongest assessment tool is our own ability to reflect on our experience and to hear what important others in our lives tell us about our functioning."⁴⁰¹ Beyond mere acknowledgement, more may be necessary to meet the challenges posed by trauma work. As reflected in Figure 20, below, possible interventions lie on a spectrum.

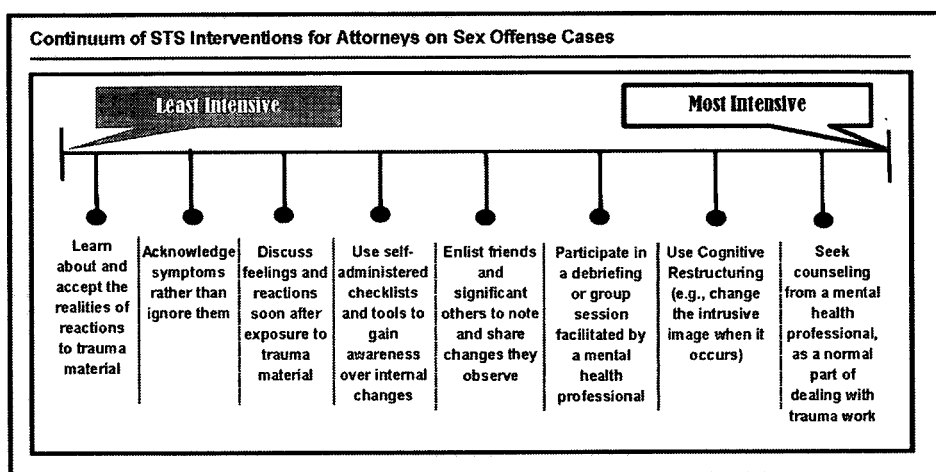


Fig. 20⁴⁰²

Evident in the Figure, an appropriate response to a particularly traumatizing court appearance might be a group debriefing facilitated by a Chief of Justice, Special Victims Prosecutor, Senior Defense Counsel, or even a military mental health professional.⁴⁰³ In the experience of Joyce Lukima, who trains attorneys

⁴⁰¹ Pearlman & Saakvitne, *supra* note 30, at 165.

⁴⁰² For a targeted discussion of some of the interventions above, see Choi, *supra* note 63, at 114 (recommending, as an intervention, to "intentionally change the image to reduce the intensity of the intrusive images"); Sandra T. Azar, *Preventing Burnout in Professionals and Paraprofessionals who Work with Child Abuse and Neglect Cases: A Cognitive Behavioral Approach to Supervision*, 56 JCLP/IN SESSION: PSYCHOTHERAPY IN PRACTICE 643, 650 (2000) (addressing the benefit of identifying, challenging, and replacing unhealthy STS-related beliefs and cognitions); Salston & Figley, *supra* note 17, at 170 (recommending that professionals should "seek personal therapy if there is any awareness of unresolved trauma").

⁴⁰³ See, e.g., Susan L. McCammon & S.E. Jackson Allison, Jr., *Debriefing and Treating Emergency Workers*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 115, 116 (Charles Figley ed., 1995) (noting how "simply talking about feelings a person is somewhat aware of could be helpful" for addressing STS).

regarding the prevention of STS in her capacity with the National Sexual Violence Resource Center and the Pennsylvania Coalition Against Rape, the key would be to use a facilitator who understands the Judge Advocate's experience, rather than someone from outside the military without knowledge of the practical realities of the military justice system.⁴⁰⁴ Fantastic resources exist on debriefing, akin to that now offered to judges and juries.⁴⁰⁵

By distinguishing ways that the prosecution and defense are similarly and uniquely affected by sexual assault traumatic material and by preventing a variety of proven, applicable STS assessment tools, this article has provided two essential ingredients for understanding STS among attorneys: education regarding "the effects of trauma on attorneys and their clients" and "clari[ty] on the extent of and risk factors for secondary trauma in attorneys."⁴⁰⁶ Regarding the third ingredient of "identifying the most effective interventions for reducing secondary trauma among legal professionals,"⁴⁰⁷ this depends on a number of factors, such as the supervisor-supervisee dynamics at individual installations, which will dictate whether one approach is more viable than others. Because such activities are dependent upon the individual's preferences, the skills of the supervisor, relationships with military mental health, and preferences of specific offices, this article does not offer any single solution.⁴⁰⁸ The lack of a uniform approach for all attorneys in every conceivable situation is hardly a drawback in combatting the effects of STS; "[t]here is no one way treat STS, and all options are viable."⁴⁰⁹

While there is no space here to cover all potential STS mitigation and prevention methods, some authors have discussed competencies related to relationships with trauma survivors that will reduce the chance of attorney STS.⁴¹⁰

⁴⁰⁴ Telephone Interview with Joyce Lukima, Vice Pres., Services, Pa. Coalition Against Rape/Nat'l Sexual Violence Resource Ctr., Enola, Pa. (May 24, 2013) (reflecting on her own experience working with first-responders in the trenches prior to training them about STS). *See also* Crawford, *supra* note 37, at 21 (noting the benefits of coordination with a mental health professional who is "familiar with working with attorneys and [who has] an understanding of the type of trauma a JA is likely to encounter").

⁴⁰⁵ *See, e.g.,* GEORGE S. EVERLY & JEFFREY T. MITCHELL, CRITICAL INCIDENT STRESS MANAGEMENT CISM: INDIVIDUAL CRISIS INTERVENTION AND PEER SUPPORT (2003).

⁴⁰⁶ Levin & Greisberg, *supra* note 67, at 252 (articulating basic goals for the legal profession in the prevention and mitigation of STS).

⁴⁰⁷ *Id.*

⁴⁰⁸ *See, e.g.,* Cerney, *supra* note 259, at 132 ("Not everyone reacts in the same manner to what objectively may be labeled as traumatic events."); Figley, *supra* note 42, at 10 ("[A]lthough some providers do experience negative effects of [STS], many do not."). Moreover, it would be counterproductive and "intrusive" to "demand self-disclosure" in debriefing sessions, making it more appropriate to allow interested individuals to share by "naming some issues in the abstract and by sharing, in a general way." Bengis, *supra* note 143, at 43. Clearly then, for those uninterested in contributing at briefing sessions, briefing would not be a valuable tool for them to address STS.

⁴⁰⁹ Salston & Figley, *supra* note 17, at 171.

⁴¹⁰ *See, e.g.,* Parker, *supra* note 18, at 182 (discussing specific techniques for attorneys to respond to survivors of traumatic experiences); CHILD WELFARE COMM., NAT'L CHILD TRAUMATIC

Workbooks also provide important guidance,⁴¹¹ as do comprehensive training and assessment programs.⁴¹² It is also worth remembering that another sure way to reduce the potential for and magnitude of attorney STS is to anticipate forensic stress triggers that might set off an individual victim or accused and plan to reduce their impact. The author of this article has addressed “trigger awareness plan[ning]” elsewhere,⁴¹³ as well as the use of tools to challenge and transform clients’ distorted, anxiety-generating thinking⁴¹⁴ about sexual assault case outcomes specifically.⁴¹⁵ This article appeals to those materials for the basic proposition that limitation of the victim’s and accused’s forensic stress will go a long way in limiting the attorney’s STS.⁴¹⁶ Rather than positing a single solution for STS, this article, instead, embraces the guidance of the former Chief of the Criminal Law Division for the Office of The Judge Advocate General, Colonel Charles Pede, who underscores the military attorney’s obligation to educate himself or herself in developing military justice skills: “[W]hile leaders bear some responsibility for encouraging training, JAs must ultimately own their careers and assume responsibility for their professional development as military justice practitioners.”⁴¹⁷ Accordingly, individual attorneys and their supervisors should explore alternatives for responding individually when a self-assessment measure indicates significant changes or when the attorney knows that something is simply not right.⁴¹⁸

STRESS NETWORK, CHILD WELFARE TRAUMA TRAINING TOOLKIT: COMPREHENSIVE GUIDE (2d ed. 2008) (providing various interventions to address professional relationships with traumatized children, specifically).

⁴¹¹ SAAKVITNE ET AL., *supra* note 8, at 19 (explaining how their workbook has the “goal . . . to increase the positive effects of . . . work [with the traumatized] and minimize its negative impact on our lives and selves”).

⁴¹² See, e.g., BETH HUDNALL STAMM, *THE CONCISE PROQOL MANUAL* (2d ed. 2010).

⁴¹³ Seamone, *supra* note 84, at 220 & fig. 5 (discussing and presenting a PTSD litigation “Trigger Awareness Plan”).

⁴¹⁴ Major Evan R. Seamone, *The Counterinsurgency in Legal Counseling: Preparing Attorneys to Defend Combat Veterans Against Themselves in Criminal Cases*, in *THE ATTORNEY’S GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT* 299, 327-31 (Brockton D. Hunter & Ryan C. Else eds., 2014) (discussing 14 common criminal litigation-related distorted thoughts and discussing methods for defense counsel to prevent them from interfering with effective representation of the war traumatized veteran client).

⁴¹⁵ *Id.* at 233-37 (demonstrating the effective use of a thought record in addressing the accused First Sergeant’s self-defeating, litigation-related thought, “Sir, if I get convicted and become registered as a sex offender, my life will be over—plain and simple.”).

⁴¹⁶ Marjorie A. Silver et al., *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship*, 19 *TOURO L. REV.* 847, 860 (2004) (discussing how the prevention of re-trauma of clients during the legal process lessens the attorney’s chance of STS).

⁴¹⁷ Pede, *supra* note 222, at 32.

⁴¹⁸ While there is certainly a place for supervising military attorneys in debriefing, some suggest that initial “instruction on secondary trauma and self-care must be conducted by a licensed mental health professional.” Crawford, *supra* note 37, at 21.

In considering the implementation of possible interventions, Judge Advocates have access to resources that civilian attorneys do not and thus have an advantage in the prevention and mitigation of STS. Attorneys and their supervisors should consider the tremendous value of consultation with military mental health professionals who are located on the installation and who, by virtue of training and experience with the military population, specialize in trauma assessment.⁴¹⁹ The very individuals who may be consulting on the prosecution or defense of sexual assault cases are uniquely qualified to offer suggestions and help develop resources for use by attorneys who experience secondary trauma.

Aside from the attorney and his or her immediate supervisor, another key player in the prevention and mitigation of STS is the institution in which the military attorney works.⁴²⁰ Though the responsibilities are shared, and the individual attorney must be ready to monitor himself or herself for signs of emotional and psychological influences, the institution has very specific responsibilities. In meeting the shared duties to combat the inevitable toll of STS on trauma workers, the organization must warn its members of the inherent risks of trauma work. This translates into providing training about the realities of experiencing STS and allowing the time, space, and encouragement to obtain assistance when required.⁴²¹ As emphasized by a sex-offender treatment provider regarding professionals who are new to the sex assault field, "we should provide a context for working through the potential 'inner landmines.'"⁴²² Ideally, the institution will also acknowledge the risks of STS and normalize responses to them, which can be accomplished primarily through frequent awareness campaigns.⁴²³

⁴¹⁹ SAAKVITNE ET AL., *supra* note 8, at 51 (discussing the vital role of such mental health "consulting" for any professional).

⁴²⁰ Major Kari Crawford has written about the JAG Corp's obligation, suggesting that, rather than relying upon unplanned and informal discussions during advocacy training, the Corps must, at a minimum, "provide secondary trauma prevention and self-care instruction at [The Judge Advocate General's Legal Center & School, U.S. Army] at every Officer Basic Course, Military Justice Manager's Course, and the Judge Advocate Officer Graduate Course." Crawford, *supra* note 37, at 21. Without consistent reinforcement over the JA's career, the absence of such training is not only a mistake, but detrimental to the emotional health and well-being of military litigators. *Id.* at 16-21.

⁴²¹ Severson & Pettus-Davis, *supra* note 52, at 18 (discussing the minimum requirements to "legitimize the experience, that is, to talk about the likelihood of experiencing a traumatic reaction . . . and normalize the experience in ways that make it easier . . . to seek help when needed."). See also Crawford, *supra* note 37, at 1, 3, 16-21, 23 (discussing the need for self-care, coping skills, and the emotional impact of "exposure to trauma survivors or traumatic material").

⁴²² Bengis, *supra* note 143, at 43.

⁴²³ See, e.g., Dutton & Rubinstein, *supra* note 17, at 96-97 ("Normalizing the trauma workers' secondary traumatic reactions (which, of course, may vary widely) as inevitable creates a work or training environment in which detection can be less stigmatized and thus facilitated through collegial interactions.").

A lesson learned in the Army Medical Command [AMEDD] is that it is never too late to institute a program to combat STS. Despite military clinicians' increased risks of STS based on their contact with war-traumatized clients, no comprehensive and systematic STS mitigation program existed until 2009, nearly a decade into the Global War on Terror.⁴²⁴ Today, all members of AMEDD, from surgeons to chaplains and hospital staff, conduct annual assessments using the ProQOL, which is a modification of the CSFT scale, both of which are included in this article.⁴²⁵ After taking a test, all AMEDD professionals must retake the test periodically to compare their stress levels and changes from prior periods for greater self-insight.⁴²⁶ The instrumental role of leaders who recognized the value of self-care and STS-prevention aided in the transition.⁴²⁷ There is no reason why the JAG Corps cannot undergo a similar shift in priorities to empower their attorneys to withstand the special challenges of sexual assault litigation.

Specifically because sexual assault cases pose special dilemmas not raised by other cases, attorneys who handle them play a pivotal role in ensuring the proper functioning of the justice system. In the military setting, where there is tremendous scrutiny over such cases and arguably greater pressures on the prosecution to convict, the challenges are even greater. In this highly contentious forum, every effort must be made to ensure that attorneys are not traumatized by the content of these cases to a degree that would diminish their abilities to meet their roles in both the defense and prosecutorial roles. Here, as in other professions, "noble acts of caregiving require noble acts of care for the caregiver."⁴²⁸ This article has provided a number of practical tools that meet the objective of preparing attorneys for the challenges of STS. It is hoped that these measures will aid the JAG Corps and other attorneys involved in sex crimes litigation to develop standardized and systematic approaches to the prevention and mitigation of STS. Perhaps, with these lessons fresh in mind, we might begin to dig deeper than the common mantra that "not every JAG is suited to be a trial or trial defense counsel" when confronted with an emotionally reactive military

⁴²⁴ Bride & Figley, *supra* note 27, at 325 (noting in 2009 that "the military only this year has begun to initiate system wide [STS mitigation] programs for caregivers").

⁴²⁵ Rubin & Weiss, *supra* note 45, at 72 (noting how ProQOL is a revised version of the CFST). For the ProQOL, see *app.* For the CSFT, see *supra* Part V. D & Fig. 13.

⁴²⁶ Pechacek, *supra* note 250, at 376 (discussing the requirement for "annual maintenance of the plan" through retesting).

⁴²⁷ Rubin & Weiss, *supra* note 45, at 75 ("[T]he most important organizational element is the role and function of military leadership" in addressing STS).

⁴²⁸ Bride & Figley, *supra* note 27, at 325.

attorney.⁴²⁹ Instead, perhaps, we might apply these lessons in recognition that “[w]e need to take care of ourselves so that we may continue to be of service to others.”⁴³⁰

⁴²⁹ Author’s Professional Experience, *supra* note 197 (relaying comments of supervisors at multiple installations regarding the suitability of counsel to work in military justice positions, especially during contemplation of removal of new Trial Counsel from their positions).

⁴³⁰ Catanese, *supra* note 8, at 38. See also Crawford, *supra* note 37, at 16 (“[A]dvocacy is only as good as the advocate; minimizing secondary trauma effects and encouraging self-care are important factors to ensure professional competence and emotional health.”).

Appendix

PROFESSIONAL QUALITY OF LIFE SCALE (VERSION 5)

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Stamm, B.H. (2010). The ProQOL (*Professional Quality of Life Scale: Compassion Satisfaction and Compassion Fatigue*). Pocatello, ID: ProQOL.org. retrieved Sept. 26, 2013, www.proqol.org

When you [help] people you have direct contact with their lives. As you may have found, your compassion for those you [help] can affect you in positive and negative ways. Below are some-questions about your experiences, both positive and negative, as a [helper]. Consider each of the following questions about you and your current work situation. Select the number that honestly reflects how frequently you experienced these things in the last 30 days.

1=Never

2=Rarely

3=Sometimes

4=Often

5=Very Often

- _____ 1. I am happy.
- _____ 2. I am preoccupied with more than one person I [help].
- _____ 3. I get satisfaction from being able to [help] people.
- _____ 4. I feel connected to others.
- _____ 5. I jump or am startled by unexpected sounds.
- _____ 6. I feel invigorated after working with those I [help].
- _____ 7. I find it difficult to separate my personal life from my life as a [helper].
- _____ 8. I am not as productive at work because I am losing sleep over traumatic experiences of a person I [help].
- _____ 9. I think that I might have been affected by the traumatic stress of those I [help].
- _____ 10. I feel trapped by my job as a [helper].
- _____ 11. Because of my [helping], I have felt "on edge" about various things.
- _____ 12. I like my work as a [helper].
- _____ 13. I feel depressed because of the traumatic experiences of the people I [help].
- _____ 14. I feel as though I am experiencing the trauma of someone I have [helped].
- _____ 15. I have beliefs that sustain me.
- _____ 16. I am pleased with how I am able to keep up with [helping] techniques and protocols.
- _____ 17. I am the person I always wanted to be.
- _____ 18. My work makes me feel satisfied.
- _____ 19. I feel worn out because of my work as a [helper].
- _____ 20. I have happy thoughts and feelings about those I [help] and how I could help them.
- _____ 21. I feel overwhelmed because my case [work] load seems endless.
- _____ 22. I believe I can make a difference through my work.
- _____ 23. I avoid certain activities or situations because they remind me of frightening experiences of the people I [help].
- _____ 24. I am proud of what I can do to [help].
- _____ 25. As a result of my [helping], I have intrusive, frightening thoughts.
- _____ 26. I feel "bogged down" by the system.
- _____ 27. I have thoughts that I am a "success" as a [helper].
- _____ 28. I can't recall important parts of my work with trauma victims.
- _____ 29. I am a very caring person.
- _____ 30. I am happy that I chose to do this work.

YOUR SCORES ON THE PROQOL- PROFESSIONAL QUALITY OF LIFE SCREENING

Based on your responses, place your personal scores below. If you have any concerns, you should discuss them with a physical or mental health care professional.

Compassion Satisfaction _____

Compassion satisfaction is about the pleasure you derive from being able to do your work well. For example, you may feel like it is a pleasure to help others through your work. You may feel positively about your colleagues or your ability to contribute to the work setting or even the greater good of society. Higher scores on this scale represent a greater satisfaction related to your ability to be an effective caregiver in your job.

The average score is 50 (SD 10; alpha scale reliability .88). About 25% of people score higher than 57 and about 25% of people score below 43. If you are in the higher range, you probably derive a good deal of professional satisfaction from your position. If your scores are below 40, you may either find problems with your job, or there may be some other reason—for example, you might derive your satisfaction from activities other than your job.

Burnout _____

Most people have an intuitive idea of what burnout is. From the research perspective, burnout is one of the elements of Compassion Fatigue (CF). It is associated with feelings of hopelessness and difficulties in dealing with work or in doing your job effectively. These negative feelings usually have a gradual onset. They can reflect the feeling that your efforts make no difference, or they can be associated with a very high workload or a non-supportive work environment. Higher scores on this scale mean that you are at higher risk for burnout.

The average score on the burnout scale is 50 (SD 10; alpha scale reliability .75). About 25% of people score above 57 and about 25% of people score below 43. If your score is below 43, this probably reflects positive feelings about your ability to be effective in your work. If you score above 57 you may wish to think about what at work makes you feel like you are not effective in your position. Your score may reflect your mood; perhaps you were having a "bad day" or are in need of some time off. If the high score persists or if it is reflective of other worries, it may be a cause for concern.

Secondary Traumatic Stress _____

The second component of Compassion Fatigue (CF) is secondary traumatic stress (STS). It is about your work related, secondary exposure to extremely or traumatically stressful events. Developing problems due to exposure to other's trauma is somewhat rare but does happen to many people who care for those who have experienced extremely or traumatically stressful events. For example, you may repeatedly hear stories about the traumatic things that happen to other people, commonly called Vicarious Traumatization. If your work puts you directly in the path of danger, for example, field work in a war or area of civil violence, this is not secondary exposure: your exposure is primary. However, if you are exposed to others' traumatic events as a result of your work, for example, as a therapist or an emergency worker, this is secondary exposure. The symptoms of STS are usually rapid in onset and associated with a particular event. They may include being afraid, having difficulty sleeping, having images of the upsetting event pop into your mind, or avoiding things that remind you of the event.

The average score on this scale is 50 (SD 10; alpha scale reliability .81). About 25% of people score below 43 and about 25% of people score above 57. If your score is above 57, you may want to take some time to think about what at work may be frightening to you or if there is some other reason for the elevated score. While higher scores do not mean that you do have a problem, they are an indication that you may want to examine how you feel about your work and your work environment. You may wish to discuss this with your supervisor, a colleague, or a health care professional.

WHAT IS MY SCORE AND WHAT DOES IT MEAN?

In this section, you will score your test so you understand the interpretation for you. To find your score on **each** section, total the questions listed on the left and then find your score in the table on the right of the section.

Compassion Satisfaction Scale

Copy your rating on each of these questions on to this table and add them up. When you have added them up you can find your score on the table to the right.

3. _____
6. _____
12. _____
16. _____
18. _____
20. _____
22. _____
24. _____
27. _____
30. _____

Total: _____

The sum of my Compassion Satisfaction questions is	So My Score Equals	And my Compassion Satisfaction level is
22 or less	43 or less	Low
Between 23 and 41	Around 50	Average
42 or more	57 or more	High

Burnout Scale

On the burnout scale you will need to take an extra step. Starred items are "reverse scored." If you scored the item 1, write a 5 beside it. The reason we ask you to reverse the scores is because scientifically the measure works better when these questions are asked in a positive way though they can tell us more about their negative form. For example, question 1. "I am happy" tells us more about

- *1. _____ = _____
*4. _____ = _____
8. _____
10. _____
*15. _____ = _____
*17. _____ = _____
19. _____
21. _____
26. _____
*29. _____ = _____

Total: _____

The sum of my Burnout Questions is	So my score equals	And my Burnout level is
22 or less	43 or less	Low
Between 23 and 41	Around 50	Average
42 or more	57 or more	High

You Wrote	Change to
	5
2	4
3	3
4	2
5	1

the effects of helping when you are *not* happy so you reverse the score

Secondary Traumatic Stress Scale

Just like you did on Compassion Satisfaction, copy your rating on each of these questions on to this table and add them up. When you have added them up you can find your score on the table to the right.

2. _____
5. _____
7. _____
9. _____
11. _____
13. _____
14. _____
23. _____
25. _____
28. _____

Total: _____

The sum of my Secondary Trauma questions is	So My Score Equals	And my Secondary Traumatic Stress level is
22 or less	43 or less	Low
Between 23 and 41	Around 50	Average
42 or more	57 or more	High